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SUPREME COURT OF THE UNITED STATES.

No. ~~240.~~ 30

ENOCH PIPER, APPELLANT,

vs.

GEORGE T. MOON, GEORGE S. LANPHEAR, P. BENJAMIN, B. W. WEST, SAMUEL B. MILLER, JOHN COMSTOCK, JAMES C. COMSTOCK, THOMAS R. CROCKER, CALEB HAWLEY, AND GILBERT COMSTOCK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 14, 1873.

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INDEX.

	Original.	Print.
Bill of complaint	1	1
Decree	6	3
Answer	7	4
Replication	13	7
Exhibit No. 1, (complainant)	15	7
Exhibit No. 2, (complainant)	20	10
Affidavit of Enoch Piper	21	11
George A. Chappell	23	12
Eugene G. Blackford	25	13
William H. Middleton	27	14
Samuel L. Storer	28	14
Walter Pearsall	29	15
Henry C. Rogers	30	15
Henry B. Renwick	31	16
Enoch Piper	34	17
Order appeal, D. Fox and J. A. Wilcox, special examiners	38	19
Testimony of Henry T. Phillips	39	20
Albert F. Draper	41	21
Alex. M. Campan	44	23
John F. Antesdel	47	24
James Maxwell	49	25
Chas. A. Lorman	50	26
Chas. S. Whitbeck	52	27
William Beal	52	28
Byron Whitaker	55	29

	Original.	Print.
Testimony of Robert McClatchey	56	29
Joseph C. Hatch	58	31
John G. Irwin	62	33
George C. Jones	64	34
Arthur Tress	65	35
William Smith	66	35
Hiram R. Johnson	67	36
George Weber	69	37
Wm. R. Dodsley	72	39
William Burke	73	39
Edmund Trowbridge	75	40
J. Hoff Jones	76	41
Eugene Robinson	77	42
August Schulte	78	42
Theophile Ancieux	83	45
Martha I. Johnson	84	46
Charles F. Peltier	85	46
Sidney Clark	86	47
Leverette N. Case	89	49
De Witt C. Holbrook	90	49
David C. Dibblee	93	50
August Schulte, (recalled)	97	53
Elizabeth Schulte	97	53
Amanda Needham	101	55
Anna Thomas	102	56
Romulus Morton	103	57
Mary Randall	104	57
Charles D. Shippey	105	58
Martha J. Blake	107	59
Philo Parsons	108	60
John Boyd	109	60
Stephen S. Johnson	116	64
John W. Barnum	120	67
Jeremiah Calnon	126	70
Certificate of examiner	129	71
Testimony of Chas. A. Wagner	131	72
James Farr	133	73
Joseph Fenger	136	75
Hiram Simonton	138	76
Peter Ambos	140	77
Order appointing F. W. Cogswell special examiner	142	78
Testimony of Lorenzo Anthony	144	79
Frederick W. Alvord	147	81
Clifton Hadley	149	82
Robert F. West	153	84
TESTIMONY ON PART OF DEFENDANTS.		
Testimony of Samuel H. Davis	155	85
John W. Wilds	209	108
Norton B. Rowley	224	115
Peter Jarriat	231	117
Amelia Rayle	242	122
Emma Worman	247	124
Charles June	249	125

	Original.	Print.
Testimony of Joseph Harrison	251	126
Albert Haryaman	253	127
Samuel Barlin	265	132
Robert Keith	278	137
David W. Davis	288	142
V. T. Macgillicuddy	311	151
George H. Hammond	318	154
Thomas S. Sprague	324	157
Aaron D. Mitchell	334	161
Hellen Spillare	363	174
George W. Hecter	370	177
Samuel H. Davis, (recalled)	376	179
Emma Worman	378	180
Amelia Rayl	381	181
Wm. R. Hines	383	181
Wm. P. Smith	387	183
Geo. De Baptist	390[3]	186
Jas. F. Mitchell	390[6]	187
Geo. H. Harrington	401	193
Daniel T. Howell	417	199
Charles Scott	424	202
John Skehan	427	203
Certificate of Jas. A. Wilcox, special examiner	432	205
Testimony of Jonathan F. Reeveamer	433	206
Simeon Fought	438	208
Jacob S. Ritze	449	213
Wm. W. Riley	455	215
Wm. D. Hewlett	464	219
Peter B. Dartois	470	222
Edwin A. Day	473	223
John A. Conquest	478	225
Hearing of cause in United States circuit court	488	228
Decision of Judge Blatchford	490	229
Consent as to defendants' costs	504	232
Copy final decree	506	233
Order allowing appeal	508	233
Notice of appeal to United States Supreme Court	510	234
Bond on appeal to United States Supreme Court	512	235

1 U. S. circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL.

To the honorable the justices of the circuit court of the United States within and for the southern district of New York, sitting in equity:

Enoch Piper, of Camden, in the county of Knox, and State of Maine, a citizen of the said State, brings this his bill against George T. Moon, George S. Lanphear, Pulaski Benjamin, Benjamin W. West, Samuel B. Miller, John Comstock, James C. Comstock, Thomas R. Crocker, and Caleb Haley, all of Brooklyn, in the State of New-York, having their respective and usual places of business in the city of New York, in said southern district of New York, and also Gilbert Comstock, of said Brooklyn, and Madison Benjamin, of said city of New York, having their usual place of business in said city of New York.

And thereupon your orator complains and says, that before the nineteenth day of March, in the year 1861, your orator, being the original and first inventor of a certain new and useful improvement in
2 the method of preserving fish and other substances, which had not been in public use or on sale with his consent or allowance more than two years, did make application, in due form of law, to the Government of the United States, for its letters-patent for such improvement; upon which application such proceedings were had that, upon the said nineteenth day of March, letters-patent of the United States, dated the said nineteenth day of March, signed by the Secretary of the Interior, and countersigned and sealed with the seal of the Patent-Office by the then Acting Commissioner of Patents, were issued and delivered to your orator for the said invention, therein entitled an improvement in method of preserving fish; whereby there was granted to your orator, his heirs, administrators, or assigns, for the term of seventeen years from the said date thereof, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement and method, a copy of which said letters-patent is hereto annexed and made part of this bill.

And your orator further shows unto your honors, that your orator has always, from the time of the granting of said letters-patent, as aforesaid, and in the exercise of the full and exclusive right and liberty so granted as aforesaid, used the improvement so patented to your orator, and has had and maintained, except the infringement hereinafter complained of, exclusive possession of the said improvement and invention, and has never acquiesced in any invasion or infringement of his said rights. And that the exclusive right of using the said improvement in the freezing and preserving of fish and other perishable articles of food is of great value to him.

And your orator further shows unto your honors, that after the granting of said letters-patent, to wit, on the eleventh day of October, 1866, he filed his bill of complaint on the equity side of the circuit court of the United States for the district of Massachusetts against
3 James Brown and William Seavey, citizens of Massachusetts, charging them with infringement of his said letters-patent, and

praying for an injunction to restrain said infringement, and for an account of profits derived therefrom; and on the 6th of February, 1868, filed his amended bill of complaint in the same cause, with a like charge and prayer; and that the said Brown and Seavey filed their answer to the said bill as so amended, in which answer they denied the novelty of your orator's said invention, and also denied their alleged infringement of said patent; to which answer your orator filed his replication; and upon the said pleadings the parties proceeded to take their proofs, in the course of which much testimony was introduced on the part of the defendants, tending to show that the said patented invention was not new with your orator; and upon said pleadings and proofs said cause was fully argued by counsel for the respective parties at a session of the said court held by the honorable George F. Shepley, circuit judge, in September, 1869, and after consideration an opinion was delivered at the May term of said court, 1870, by Mr. Justice Shepley, holding the said letters-patent to be valid, and to have been infringed by the said Brown and Seavey, and directing a decree for the complainant for an injunction and an account, as prayed for in his said bill of complaint; a copy of which decree is hereto annexed and made a part of this bill.

And your orators further shows unto your honors, that the respondents herein, having full knowledge of the premises, and in violation of your orator's exclusive right and privilege as aforesaid, and utterly diregarding the same, have, since the date of said letters-patent and while said exclusive right was in your orator as aforesaid, at the city of New York, and elsewhere in the southern district of New York, used, and still continue and give your orator reason to fear that they will in the
4 future continue to use, the said improvement secured to your orator as aforesaid, but to what extent your orator is unable to say, and prays that the said respondents may discover and set forth to what extent they have used the said improvement in their answer to this bill.

To the end, therefore, that the said respondents may, upon their several corporal oaths, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, according to the best and utmost of their knowledge, information, and belief, and that the respondents may be decreed to account for and pay over to your orator all gains and profits which have accrued to them from their said infringement of your orator's said letters-patent, and also all damages sustained by your orator by reason of their said infringement, with such increase thereof, not exceeding three times the amount of said damages, as to your honors may seem meet, and that the said respondents, and each of them, may be perpetually restrained by an injunction issuing out of this honorable court from using or employing the said improvement, so patented to your orator as aforesaid, and also that they may be restrained, during the pendency of this suit, by an interlocutory injunction restraining them from such use, and for such other and further relief as to your honors may seem meet—

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, and an interlocutory injunction restraining the respondents according to the prayer of this bill till further order, but also a writ of subpœna, directed to the said George T. Moon, George S. Lanphear, Pulaski Benjamin, Benjamin W West, Samuel B. Miller, John Comstock, James C. Comstock, Thomas R. Crocker, and Caleb Haley, Gilbert Comstock, and Madison
5 Benjamin, commanding them, on a day certain, and under a cer-

tain penalty, to be and appear in this honorable court, and answer to this bill of complaint, and do and receive what to your honors shall seem meet.

And your orator will ever pray.

ENOCH PIPER.
M. B. ANDRUS,
Compl't's Sol'r.
CAUSTEN BROWN,
Of Counsel for Compl't.

UNITED STATES OF AMERICA,
State of Massachusetts, county of Suffolk, ss:

At Boston, in said county, this 24th day of August, A. D. 1871, personally appeared the above-named Enoch Piper, and made solemn oath that he has read the foregoing bill of complaint by him subscribed, and that the matters and things therein stated as of his own knowledge are true, and that so far as they are stated on his information and belief he verily believes the same to be true.

Before me.
[L. S.]
N. AUSTIN PARKS,
Notary Public.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 28th day of August, 1871, personally appeared before me Enoch Piper, plaintiff in this cause, and, after the insertion of the names of Gilbert Comstock and Madison Benjamin, as defendants, made solemn oath that he has read the foregoing bill of complaint by him subscribed, and that the matters and things therein stated as of his own knowledge are true, and that so far as they are stated on his information and belief he verily believes them to be true.

R. E. STILWELL,
U. S. Com'r for the Southern Dist. of New York.

6 (Endorsed:) Enoch Piper vs. George T. Moon et al. In Eq' Bill of complaint.

Decree.

United States circuit court, district of Massachusetts. In equity.

ENOCH PIPER *vs.* JAMES BROWN ET AL. } October term, 1870, to wit: Novemb'r 10, 1870.

This cause coming on to be heard, after argument by counsel and upon pleadings and proofs, it is ordered, adjudged, and decreed by the court as follows:

That the patent dated March 19th, 1861, granted to Enoch Piper, the complainant, for an improved method of preserving fish and other articles, upon which this suit is founded, is a good and valid patent, and that the respondents have infringed the same, and that the respondents and their agents and servants be restrained and enjoined, until the further order of this court, by a writ of injunction issuing therefrom, from using, employing, or practicing the invention described and claimed therein; that the complainant recover of the respondents all gains and profits by them made from their infringements of said patent; and

that it be referred to Edward F. Hodges, esq., one of the masters of this court, to take account of said gains and profits, and state the
7 same to the court; that the said master be and he is hereby authorized to require the respondents to appear before him from time to time, as he shall direct, and to produe their books, vouchers, and other documents necessary or pertinent to such accounting; that the complainant, at such accounting, have the right to examine the respondents ore tenus or otherwise; and that the parties have the right to produce before the said master such further evidence as they may severally deem proper.

By the court:

JOHN G. STETSON,
Clerk.

A true copy.
Attest:

JOHN G. STETSON,
Clerk.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON, GEORGE S. LANPHEAR, Pulaski Benjamin, Benjamin W. West, Samuel B. Miller, John Comstock, James C. Comstock, Thomas R. Crocker, Caleb Haley, and Gilbert Comstock.

The joint and several answer of George T. Moon, George S. Lanphear, Pulaski Benjamin, Benjamin W. West, Samuel B. Miller, John Comstock, James C. Comstock, Thomas R. Crocker, Caleb Haley, and
8 Gilbert Comstock, defendants, to the bill of complaint of Enoch Piper, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors, uncertainties, and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much thereof as they are advised it is material or necessary for them to make answer unto, answering, say:

That they have been informed and believe that the said complainant did make application for letters-patent of the United States for an improvement in the method of preserving fish and other articles, and that letters-patent were granted to him on such application, bearing date the 19th day of March, A. D. 1861; but these defendants, for greater certainty, crave leave to refer to the original letters-patent when the same shall be produced; and they do not admit, but absolutely deny, that the said complainant was the original and first inventor of said improvements.

These defendants, further answering, say that they do not know, and are not informed, save by said bill of complaint, to what extent the said complainant has exercised the right or liberty purporting to be granted by said patent, or what possession he has had of the same, or whether or not he has acquiesced in any infringement thereof, and leave the complainant to make such proof thereof as he may be advised is material. But they deny that said complainant has ever possessed any ex-

clusive right to the use of said alleged improvement in freezing or preserving fish or anything else.

And these defendants, further answering, say, that they are informed and believe that the said complainant did file a bill of complaint on the equity side of the circuit court for the district of Massa-
9 chusetts against James Brown and William Seavey, charging them with infringement of his said letters-patent, praying for an injunction to restrain said infringement; and these defendants are informed and believe that the said circuit court, on the evidence in that suit, decreed that the said letters-patent were valid, and that an injunction be issued against the said Brown and Seavey, restraining and enjoining the said Brown and Seavey from infringing the said letters-patent; but these defendants say that the said judgment or adjudication does not affect the rights of these defendants, as they were not parties to the said suit, nor do they derive any right, title, or interest from or under the parties to the said suit, either before or subsequent to the rendition of said judgment or decree.

And these defendants, further answering, deny that they have, with the knowledge of the premises set forth in said bill, and in violation of any exclusive right of said complainant, in the city of New York or elsewhere, used or still continue to use said alleged improvement.

And these defendants, further answering, say that they do not admit, but deny, that the complainant will be subject to great and irreparable injury unless he shall obtain the relief sought.

And these defendants, further answering, say that they erected and constructed, at New York aforesaid, an apparatus for preserving meats, fruits, &c., according to and with license under letters-patent granted to William Davis, of Detroit, and State of Michigan, bearing date the 16th day of June, A. D. 1861, and re-issued to William Davis, assignor, to William Davis, Samuel H. Davis, and William W. Davis, of the city of Detroit, and State of Michigan, which said re-issued patent is dated the 15th day of September, A. D. 1868, and that they have used and em-
ployed the last aforesaid apparatus for the purposes aforesaid,
10 and that in the use of said apparatus the freezing mixture and the article to be preserved are contained in separate close vessels or apartments, which separate vessels or apartments have no atmospheric communication between them; but these defendants are advised, and so aver the fact to be, that the apparatus constructed, used, and employed by them differs entirely from that constructed according to the letters-patent granted to said complainant in the mechanical devices used, and the manner in which it is combined and arranged and in its mode of operation and results.

And these defendants, further answering, say that they are informed and believe that said complainant was not the original and first inventor or discoverer of the process or thing patented by his said patent, or of substantial parts thereof claimed as new.

And these defendants, further answering, say that they are informed and believe that said complainant was not the original and first inventor or discoverer of the process or thing patented by his said patent, or of substantial parts thereof claimed as new; but that, on the contrary thereof, long prior to the time of the alleged invention by said complainant, the same was known to and used by Wm. Davis, late of Detroit, Michigan, now deceased; at Columbus, Ohio, and said Detroit, by Samuel H. Davis and David W. Davis at said Columbus and Detroit, who now reside at said Detroit; by John Barclay and William D. Hewlett, at New Brunswick, N. J., said Hewlett now residing in the city of

New York, and said Barclay being now deceased; and by Edwin A. Day, at Jersey City, N. J., who now resides at said Jersey City.

And these defendants, further answering, on information and belief say that the art of artificially freezing articles for use and preservation in a close chamber, by means of a freezing mixture, having no con-
11 tact with the atmosphere of the preserving chamber, was practiced and in use for long time anterior to the pretended discovery thereof by the said complainant, and that one of the processes and appar'tus used for such artificial freezing, in a close vessel or chamber, by means of a freezing mixture having no contact with the atmosphere of the preserving or retaining chamber, and wherein the article to be frozen is not brought into contact with the refrigerant, is described and set forth in McKenzie's 10,000 Receipts, printed and published in the United States in the year A. D. 1830, under the article Ice Cream.

And these defendants pray the same benefit of the facts and things herein set forth as if for the reason thereof they had demurred to said bill where a demurrer would have been proper, and the same benefit thereof as if they had been specially pleaded to said bill.

And these defendants submit to this honorable court that said complainant has no right to any further answer to said bill or any part thereof than is hereinbefore contained, and no right to any injunction, account, or other relief prayed for in said bill; and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

his
GEORGE+T. MOON.
mark.
GEORGE S. LANPHEAR.
PULASKI BENJAMIN.
BENJAMIN W. WEST.
SAMUEL B. MILLER.
JOHN COMSTOCK.
JAMES C. COMSTOCK.
THOS. R, CROCKER.
CALEB HALEY.
GILBERT COMSTOCK.

GEORGE GIFFORD,
Solicitor and of Counsel for Defendants, 34 Beach st., New York.

12 UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 16th day of January, 1872, before me personally appeared George T. Moon, George S. Lanphear, Pulaski Benjamin, Benjamin W. West, Samuel B. Miller, John Comstock, James C. Comstock, Thos. R. Crocker, and Caleb Haley, the above-named defendants, who, being by me severally duly sworn, each for himself deposes and says, that he has heard read the foregoing answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

[L. S.] GEO. H. COLLINS,
Notary Public, N. Y. County.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 17th day of January, 1872, before me personally appeared Gilbert Comstock, one of the above-named defendants, who, being by

me duly sworn, deposes and says that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

[L. S.] WM. CLITUS WITTER,
Notary Public, N. Y. County.

13 (Endorsed:) U. S. circuit court. In equity. Enoch Piper *vs.* George T. Moon, George S. Lanphear, and others. Copy answer. George Gifford, def'ts' sol'r, 34 Beach st., N. Y.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON, GEORGE S. LANPHEAR, Pulaski Benjamin, Benjamin W. West, Samuel B. Miller, John Comstock, James C. Comstock, Thomas R. Crocker, Caleb Haley, and Gilbert Comstock.

The replication of Enoch Piper, complainant, to the answer of the above-named defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the
14 law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

M. B. ANDRUS,
Compl't's Sol'r.

(Endorsed:) U. S. circuit court, southern district of N. Y. In equity. Enoch Piper *vs.* George T. Moon et al. Replication. M. B. Andrus, compl't's sol'r, 134 Nassau st., New York. Filed February 3, 1872.

15 U. S. circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

Testimony taken on behalf of the complainant for final hearing, under and pursuant to the 67th rule in equity, as amended, before Albert K. Post, an examiner of the court:

NEW YORK, FEBRUARY 16, 1872—11 A. M.

Present: Causten Browne, esq., and M. B. Andrus, esq., of counsel for complainants, and George Gifford, esq., of counsel for defendants.

Counsel for complainant offers in evidence letters-patent No. 732,

granted March 19, A. D. 1861, to the complainant for an improvement in method of preserving fish, marked Exhibit No. 1; also, a stipulation, signed by the counsel for the defendants, and marked Exhibit No. 2, dated February16, 1872, with the copies of affidavits thereto annexed.

Adjourned, by consent, to new notice.

COMPLAINANT'S EXHIBIT No. 1—A. K. P., EX'R.

No. 732.

The United States of America to all to whom these letters-patent shall come:

16 Whereas Enoch Piper, of Camden, Maine, has alleged that he has invented a new and useful improvement in method of preserving fish, which he states has not been known or used before his application, has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not to the best of his knowledge and belief been previously known or used, has paid into the Treasury of the United States the sum of thirty dollars and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose: These are, therefore, to grant, according to law, to the said Enoch Piper, his heirs, administrators, or assigns, for the term of seventeen years from the nineteenth day of March, one thousand eight hundred and sixty-one, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Enoch Piper in the schedule hereunto annexed and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

Given under my hand, at the city of Washington, this nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States of America the eighty-fifth.

[L. S.] CALEB B. SMITH,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

S. T. SHUGERT,
Acting Commissioner of Patents.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

17 Be it known that I, Enoch Piper, of Camden, in the county of Waldo, and State of Maine, have invented a new and improved method of preserving fish and meats; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings forming a part of this specification.

The nature of my invention consists in a method of preserving fish

and other articles by placing them within a chamber, and cooling the latter by means of a freezing-mixture, so applied that no communication shall exist between the interior of the preserving-chamber and that of the vessels in which the freezing-mixture is placed.

The most important application which I propose to make of my invention is for preserving salmon, which are only taken in large quantities in high northern latitudes in summer, so remote from our large cities that they can be made available in a fresh state only by artificial congelation.

Hitherto the only method in use for preserving this kind of fish in a fresh state has been to pack them with crushed ice in barrels or boxes. This method, however, owing to the melting of the ice and the consequent moistening of the fish, fails to prese've them fresh and good for more than a month at most; whereas by my new method and treatment they can be kept as fresh and sweet as when first caught and for any desirable length of time—even for years.

I do not profess to have invented the means of producing artificial congelation, nor to have discovered the fact that no decay takes place in animal substances so long as they are kept a few degrees below the freezing-point of water; but the practical application of these to the art of preserving fish and meats, as above described, is a new and very valuable improvement.

The ap'aratus for freezing the fish and keeping them in a frozen state, may be constructed in various ways and of different shapes.
18 The apparatus shown in the drawing, however, will suffice to illustrate the principle and mode of operation.

A is a box of wood, or other suitable material, in which the fish are laid in small quantities on a rack, R. The said box is surrounded by a packing of charcoal or other suitable non-conducting material.

1, 2, 3, 4, are metallic pans, which, being filled with a freezing mixture, such as salt and ice, are then set over the fish, and the cover, A′, is shut upon them. The temperature in the box soon falls to 10° or 15° below the freezing-point of water, and in about twenty-four hours (the mixture being changed once in twelve hours) the fish will be frozen completely through.

After being thus frozen the fish or meats may, if desired, be covered with a coating of ice by immersing them a few times in ice-cold water, or by applying the water with a brush or swab several times, forming a coat of about $\frac{1}{8}$ of an inch in thickness. To prevent the ice from cracking off, I then apply to the fish, when they are to be kept an unusual length of time, a cover of cloth, and in the same manner cover the cloth with another coating of ice; or they may be coated with gum-arabic, India rubber, gutta-percha, tin-foil, or any suitable substance, either in combination or separately, that will effectually exclude the air and prevent the juices from escaping by evaporation, thereby preserving the same plump and fresh appearance as when first frozen.

The fish are then packed closely together in a large preserving-box, C, which is enclosed in a still larger box, B, the space between the two boxes being filled with charcoal or other non-conducting material, to exclude the heat. Passing through the inner box are metallic tubes, D, which are open at the upper ends for the introduction of a freezing-mixture, the lower extremities being formed with flanges, which are screwed to the bottom of the box. A small pipe, F, leads from the bottom of each tube, D, to the outside of the outer box; the object of said
19 pipes being to draw off the brine from the tubes D as often as

required. When not used for this purpose, the pipes are stopped by any suitable means at their outer ends.

a a are slats or covers, which may be removed at pleasure for the purpose of putting in or taking out the fish.

B′ is the cover of the outer box, and is provided with holes, D′, through which, when the cover is shut down, the tubes D may project, so that they may be charged with the freezing-mixture without opening the box.

The combined area of the tubes D may be about $\frac{1}{5}$ that of the chamber C by keeping the said tubes filled with the mixture of salt and ice; the temperature of the preserving-chamber can be maintained for any length of time below the freezing-point, and fish surrounded by this dry and freezing atmosphere will be preserved as fresh and good as when first caught, and for a much longer period than by any other method known to me.

E E E′ E′ are small holes for introducing a thermometer to ascertain the temperature in the chamber.

I do not desire to be understood as confining myself to the use of the specific apparatus above described, nor to the use of either or both the preliminary processes of freezing and coating, but I have described the mode of operation which by experience I have found best for preserving the most delicate varieties of fish.

In the case of meats it is not necessary to resort to the coating process, especially beef and pork preserved for salt-packing in warm weather, which can be done by this treatment with no more loss than in the best winter weather; while the cold pickle or brine of the dissolving salt and ice is ready made, and may be drawn off as required to pickle the barrels after packing the meats, etc.

Having thus described my invention, what I claim therein as new, and desire to secure by letters-patent, is:

Preserving fish or other articles in a close chamber, by means of a freezing-mixture, having no contact with the atmosphere of the preserving-chamber, substantially as set forth.

ENOCH PIPER.

Witnesses:
N. AMES.
GEO. H. SMITH.

COMPLAINANT'S EXHIBIT NO. 2.—A. K. P., EX'R.

U. S. circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL.

It is hereby stipulated that the affidavits of Enoch Piper, George A. Chappell, Eugene G. Blackford, William H. Middleton, Samuel L. Storer, Walter Pearsall, Henry C. Rogers, and Henry B. Renwick, heretofore taken and entitled in this cause, and of which copies are hereto annexed, may be read and used on the part of the complainant therein on any hearing therein with the same effect as if the same were depositions taken after issue joined and after notice to the defendants.

Dated Feb. 16th, 1872.

GEO. GIFFORD,
Defendant's Solicitor.

21 United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

ENOCH PIPER, of lawful age, being duly sworn, says:

I am a citizen of Camden, Maine, and am the complainant in the above-entitled cause. On the twenty-sixth day of August, 1871, I visited, by permission, the apparatus for preserving fish and other substances from decay by the application of cold, situated at No. 219 Front street, in the city of New York, which I am informed and believe belongs to and is used by the defendants in this suit. I found the apparatus to consist of three chambers, each about twelve feet long, fourteen feet wide, and eight feet high. I was only admitted to one of these chambers, but I was informed by the man who showed me the apparatus that all three were exactly alike. The chamber which I entered I carefully examined, and found its construction to be as follows: The walls, ceiling, and floor are made double, and the interior space is filled with sawdust and other non-conducting material. The interior walls and the floor consist of or are covered by galvanized iron. The ceiling is of wood. The entrance to the chamber is a small, close-fitting trap-door in the ceiling, opening into a loft above, and there is no other means of communication between the chamber and the external air than this door. Along two opposite sides of the chambers, and extending nearly to the wall at each
22 end, are two galvanized-iron tanks or ice-receptacles, having a space of perhaps six or eight inches between their ends at the middle of the side of the chamber. These tanks or ice-receptacles are made of galvanized-iron plates, tightly fitted together and to the iron tops and ends and bottoms of the tanks, so as to allow no communication between the freezing-mixture contained in them, when the apparatus is charged up for use, and the air of the chamber. They are, I should say, about six or eight inches wide at the top and three at the bottom. They are raised upon legs about two inches from the floor, and reach to within three or four inches of the ceiling of the chamber. From each end of the top-cover of each tank, or rather from within about six inches of each end, iron tanks or pipes, of a rectangular shape, about a foot wide and six inches from front to back side, run up through the ceiling of the chamber and open into a loft above. These pipes are bolted to the top of the ice-tanks so as to make a tight joint, and made to fit as tightly as possible into the holes in the ceiling through which they pass to the loft above. In the centre of the chamber, and running nearly the whole length of the room, are two other ice-tanks, constructed and arranged precisely like those on the sides. From the ends of each of the tanks, which are next each other in the middle of the length of the chamber, a drain-pipe runs into a larger drain-pipe, which carries off from the tank the drainings of the melting ice and salt with which the tanks are filled when the apparatus is in operation. I visited the loft above, and found there in the floor the openings made for the ends of the pipes or tubes which run up through the ceiling of the preserving-chamber. Each opening is closed by a tight-fitting trap-door. The mode of operation of the apparatus, as explained to me by the man who showed it to me and who appeared to be in charge of it, is as follows: A mixture of ice and salt is poured into the openings in the loft of the pipes which run

up from the tanks in the preserving-chamber until the tanks
23 and pipes are sufficiently filled, the trap-doors are closed, and the apparatus left until the atmosphere of the preserving-chamber is sufficiently cold, when the fish or other articles to be preserved are put into the chamber and left until wanted for use. I found no communication between the interior of the ice-tanks and the atmosphere of the preserving-chamber, and was informed by the man in charge that none existed. By lifting the trap-doors, which close the ends of the tubes which run up and open in the loft, I found that one of the three chambers of the apparatus was charged and in operation, the tubes connected with that one containing ice and salt. The chamber which I was permitted to enter was not in operation at the time, but evidently had been within a short time, as the walls and floor were covered with moisture. I asked to be allowed to see the fish which I supposed to be in the chamber which was then charged up, and was told that fish preserved in the appar'tus were always on sale in the market, and that I could see them there.

ENOCH PIPER.

Subscribed and sworn to before me this 28th day of August, 1871.

JOHN A. SHIELDS,
U. S. Commissioner State of New York.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

GEORGE A. CHAPPELL, of lawful age, being duly sworn, says:
24 I reside in Brooklyn, New York, and do business as a dealer in fish at the wholesale fish-market situated opposite Fulton, in the city of New York. The name of my firm is . I am a member of the Fishmongers' Association of New York City. Some time in the latter part of the winter or early spring of 1871 negotiations were entered upon between the proprietors of the freezing and preserving apparatus situated at 219 Front street, in the city of New York, and the association, with a view to an arrangement by which the members of the association should have the right to freeze and preserve their fish in said apparatus in company with the then proprietors. The proprietors of the apparatus were the firms of Moon & Lanphear, Benjamin & West, Samuel B. Miller, John Comstock & Company, Crocker & Haley, and Gilbert Comstock & Company, all dealers in fish, and comprising the defendants in the above-entitled cause. I, with some others, was appointed on a committee for the association to negotiate with the proprietors, examine the apparatus, terms offered, &c., and report upon the advisability of making the arrangement. As one of the committee I did make the examination necessary, and had frequent conversations with the proprietors of the apparatus; the result of which was that the committee reported in favor of the proposed arrangement, but owing to subsequent occurrences it was never consummated, and the then proprietors still own the apparatus, to the best of my knowledge and belief. My relations with them are such that I should undoubtedly have known of it if a change in the proprietorship of the apparatus had been made.

In the course of my business I have for some time bought, and am now regularly buying, salmon frozen and preserved in the said apparatus. My purchases have usually been, and are now, made of the firm of Moon & Lanphear, as a matter of favor to them. Fish preserved in the apparatus are, however, always for sale in the market, at a
25 uniform price, by all the proprietors of the apparatus. About a month ago, or perhaps six weeks, I visited the said apparatus and found it in operation. A large number of salmon were already in the chambers, and others were being put in as rapidly as possible. I was informed by one of the parties interested that at that time they had in the apparatus, or would soon have, thirty thousand pounds of salmon.

GEORGE A. CHAPPELL.

Subscribed and sworn to before me on this 28th day of August, 1871.
JOHN A. SHIELDS,
U. S. Commissioner State of New York

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

EUGENE G. BLACKFORD, of lawful age, being duly sworn, says:

I reside in Brooklyn, E. D., and am a fish-dealer in Fulton market, in the city of New York. On the twenty-sixth day of August, 1871, I visited and examined an apparatus for preserving fish and other substances from decay by the application of cold at 219 Front street, in said city.

The said apparatus, I am informed and believe, was constructed for,
26 and is now used by, the defendants in the above-entitled cause in their business. The apparatus consists in three compartments or chambers, each, I should say, from twelve to fourteen feet long, about fourteen feet wide, and eight feet high. I examined carefully one of these compartments, and I was informed by the person in charge that they were all exactly alike. The chamber which I particularly examined was constructed as follows: The floor, the two ends and sides, were made double and packed with sawdust or other non-conducting material, and covered with galvanized iron or zinc. The ceiling was of wood, also double, and packed like the floor and side. Along two sides of the chamber, and extending nearly the whole length of it, ran two tanks or ice-receptacles, with a space of a few inches between their ends at the center of the room. These receptacles were of galvanized iron, and were raised upon legs three or four inches from the floor, and reached to within about three inches, I should say, of the ceiling.

From the top of each ice-receptacle run up through the ceiling of the chamber, into an ice-loft above, two iron pipes of a rectangular shape, and, I should say, about eight inches wide to four inches deep. These pipes were so connected with the top of the ice-tanks as to make as close a joint as possible, and were fitted as tightly as could be to the hole in the ceiling of the chamber, through which they passed into the loft above. The tanks were about six inches wide at the top and three at the bottom, and the plates of which they were made were tightly bolted together, so as to prevent contact between the freezing-mixture in them and the air of the chamber when the apparatus was charged up for use. A similar tank or ice-receptacle stood in the middle of the

chamber, and served to divide this chamber into two compartments. From each tank, at the end, in the center of the chamber, ran a short drain-pipe into a larger one, which serves to carry off the drainings of the melting freezing-mixture in the tanks. I also visited the ice-loft above, and found the pipe before mentioned on a level with the
27 floor of the loft and covered by trap-doors. The process of using the apparatus, as described to me by the man in charge, consists in filling the pipes from the ice-loft with a mixture of ice and salt, and by jamming it down, filling the tanks into which the pipes run, and keeping the chamber tightly closed until the temperature of the air contained in it is sufficiently reduced. The apparatus is carefully constructed, so as to allow as little communication as possible between the air of the chamber and the freezing-mixture. When I visited the apparatus one of the chambers was charged up and in operation. This one I did not enter.

EUGENE G. BLACKFORD.

Subscribed and sworn to before me this 28th day of August, 1871.
JOHN A. SHIELDS,
U. S. Commissioner State of New York.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

WILLIAM H. MIDDLETON, of lawful age, being duly sworn, says: I reside in Brooklyn, New York, and am one of the firm of Middleton, Carman & Company, fish-dealers in Fulton market, in the
28 city of New York. I know of the existence of the freezing and preserving apparatus situated at No. 219 Front street, in the city of New York, though I have never examined its interior construction. It is well known in the market among the fish-dealers that it is owned and operated by the defendants in this suit in their business. I have seen salmon taken out of the apparatus in a frozen condition and delivered to purchasers several times, and the last time this morning. Fish frozen and preserved in it are always for sale in the market by the proprietors of the apparatus at a uniform price.

WM. H. MIDDLETON.

Subscribed and sworn to before me this 29th day of August, 1871.
JOHN A. SHIELDS,
U. S. Commissioner, State of New York.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

SAMUEL L. STORER, of lawful age, being duly sworn, says: I reside in Kings County, Long Island, and am a member of the firm of Chappell & Storer, wholesale fish-dealers in the fish-market opposite Fulton

market, in New York City. Some time in the late winter or early spring of this year my firm, which is a member of the Fishmongers' Association of New York, together with the other members of the association, was invited by the proprietors of the freezing and preserving
29 apparatus situated at No. 219 Front street, New York City, who are the defendants in the above-entitled cause, to make an arrangement with them by which we should obtain an interest with the proprietors, and have our fish frozen and preserved in the apparatus in common with them. Negotiations were had on the subject, but the arrangement was never carried out, and, so far as I know, the then proprietors still own and use the apparatus. Fish frozen and preserved in it are always for sale in the market by them. Within eight weeks I have visited the said apparatus and found it in operation. One of the chambers was partly filled with salmon, and others were being put in while I was there. My firm has for some time purchased fish preserved there from Messrs. Moon & Lanphear, defendants in this suit, and is now doing so as occasion requires.

SAMUEL L. STORER.

Subscribed and sworn to before me this 29th day of August, 1871.

JOHN A. SHIELDS,
U. S. Commissioner, State of New York.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

WALTER PEARSALL, of lawful age, being duly sworn, says: I reside in the city of New York, and am one of the firm of Walter Pear-
30 sall & Company, fish-dealers in the fish-market opposite Fulton market, in said city. Within eight weeks I have visited the freezing and preserving apparatus owned and used, as I am informed and believe, by the defendants in the above-entitled suit. The apparatus was then charged up and in operation. There were men at work there taking out frozen salmon and putting in fresh ones in considerable quantities. I should think I saw there at least a dozen boxes of salmon already frozen and taken out of the apparatus, which would make fifteen hundred pounds or more. I am not able to state how many fish I saw going into the apparatus to be preserved, but there was a considerable quantity; I should say six or eight boxes, or upwards of a thousand pounds. Fish preserved in the apparatus are always on sale in the market by the proprietors of it.

WALTER PEARSALL.

Subscribed and sworn to before me this 29th day of August, 1871.

JOHN A. SHIELDS,
U. S. Commissioner, State of New York.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

HENRY C. ROGERS, of lawful age, being duly sworn, says: I reside in New Jersey, and am one of the firm of Henry C. Rogers & Com-

pany, fish-dealers in the fish-market opposite Fulton market, in New York City. My firm has for some time bought, and is now buying, as occasion requires, salmon frozen and preserved in the apparatus situated at No. 219 Front street, in New York City, owned by the defendants in this suit. Our purchases are made of Messrs. Moon & Lanphear, defendants, and the fish are delivered to my man at the apparatus upon presentation of a written order for them. Fish frozen and preserved in the apparatus are generally for sale in the market by parties by whom it is owned and run.

HENRY C. ROGERS.

Subscribed and sworn to before me this 29th day of August, 1871.

JOHN A. SHIELDS,
U. S. Commissioner, State of New York.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

HENRY B. RENWICK, of the city of New York, being duly sworn, deposes and saith, that he is 54 years of age; by profession a civil and mechanical engineer; and that he has frequently been examined as expert in the circuit courts of the United States in suits in which patents were in question.

Deponent further saith, that he has frequently and carefully examined letters-patent No. 732, granted March 19th, A. D. 1861, to Enoch
32 Piper, the complainant in the above-entitled case, for a new and useful improvement in method of preserving fish, and was examined as expert in the case of Enoch Piper vs. James Brown et als., in the United States circuit court for the district of Massachusetts, for infringement of said patent; deponent has also examined copies of the affidavits made by Enoch Piper, George A. Chappell, Eugene G. Blackford, Wm. H. Middleton, Samuel L. Storer, Walter Pearsall, and Henry C. Rogers, all sworn to on the 28th and 29th days of August, A. D. 1871, and made in the present case, and understands the construction of the apparatus therein described and the mode of using the same in order to freeze and preserve in a frozen state fish, etc.

Deponent saith further, that the said apparatus of the defendants, Moon et als., is in all respects substantially identical with that described in the letters-patent granted to Piper aforesaid June 2d, A. D. 1868, and with that described in re issued letters-patent No. 3119, granted to William, Samuel H., and David W. Davis, September 15th, A. D. 1868, being a re-issue of a patent granted June 16th, A. D. 1868, in so far as these three apparatuses consist of a box or chamber with non-conducting walls, of wedge-shape receptacles, located within such chamber, of a drain-pipe to said receptacles, of a trap-door or doors to enter the chamber, and of other trap-doors through which the receptacles may be filled with freezing-mixture, such receptacles in all the three apparatuses being located with their small ends downwards, and not extending to the bottom of the chamber, and in all of them the space within the receptacles being separated from the space within the chamber itself, so that there can be no mingling of the atmosphere within the chamber

with that contained within the receptacles or with vapor of freezing-mixture contained within the receptacles.

Deponent further saith, that all of said apparatuses are substantially identical with that described in letters-patent aforesaid granted to Piper aforesaid, No. 732, and with the apparatus visited by deponent at Charlestown prior to July 17, 1868, and owned and worked by James Brown et als., as deponent was informed, (who were defendants in the case in the district of Massachusetts, before referred to, sued therein for infringement of said patent by their use of said apparatus,) in so far as all of these apparatuses had chambers with non-conducting walls, doors, or holes, admitting entry thereto, and receptacles for freezing-mixture, which latter had no connection with the atmosphere of the chamber in which the fish were frozen or kept preserved in a frozen state after being frozen.

33

The apparatus of the defendants, Brown et als., differed in form from that of the defendants, Moon et als., in that the receptacles of the former were a row of tubes, whereas in the latter these receptacles are wedge-shaped, and in the former the entrance-door into the chamber was in the vertical side thereof, whereas in the latter it is a trap-door on the roof of the chamber. Further, in the apparatus of Brown et als. there were some small holes in the receptacles which permitted the atmosphere of the chamber to come in contact with the freezing-mixture, whereas in the apparatus of Moon et als. there are no holes at all and no connection whatever between the atmosphere of the freezing and preserving chamber and the interior of the receptacles to contain freezing-mixture, the apparatus of defendants, Moon et als., being, in the latter respect, identical with that of the Piper patent, No. 732.

After a careful examination of the affidavits before cited, deponent is satisfied that the apparatus used by defendants, and the process therein worked out for freezing and preserving in a frozen state, fish, etc., is substantially identical with the process and apparatus described in the patent granted to Piper, No. 732, and also with the process and apparatus worked out and used by the defendants, Brown et als., at Charlestown, Massachusetts, and for which they were sued as infringers in the case before referred to.

34

Deponent further saith, that the idea of making the receptacles wedge-shape or tapering, and smallest at the bottom of the chamber, and not extending to the bottom of the chamber, in order to produce certain effects, is not new in the apparatus of the defendants, Moon et als., but that substantially this construction of receptacles for freezing-mixture is described in letters-patent granted to the complainant, Piper, No. 36,107, dated August 5, A. D. 1862.

HENRY B. RENWICK.

Sworn to before me this sixth day of November, 1871.

[L. S.] GEORGE M. VAN HOSEN,
Notary Public New York Co.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

DISTRICT OF MASSACHUSETTS, *ss:*

ENOCH PIPER, of lawful age, being duly sworn, says:

I have previously given affidavits in this cause. I first heard that there was an apparatus for freezing and preserving fish and

35

other substances, near Fulton market, in the city of New York. I think about a year ago I was told that there was a freezer there, but I did not know how it was constructed, and I understood at that time that it had been used to a very limited extent only, and had not proved successful. I did not know that it was in practical successful operation, nor that fish perserved in it were on sale in the market till July of this year. I was then in St. John's, N. B. As soon as my business at St. John's would permit, after receiving positive information that the apparatus was really in use and that fish preserved in it were on sale in the market—that is about the middle of last August—I went to New York and made a request of Gilbert Comstock, one of the defendants, who I was informed had charge of the apparatus, to be allowed to see it, and upon his asking me what my object was I told him that I wanted to ascertain whether there was any infringement of my rights under my patent. He said that Mr. Lanphear, who had charge of the apparatus, was away, but that Mr. Comstock would consult the parties interested and let me know whether I could examine the freezer or not. He did so, and reported to me that Lanphear had left directions not to show the apparatus to anybody, and I could not see it. It was during my stay in New York at this time, about the middle of last August, that I first definitely learned who were the owners and proprietors of the apparatus, though I may have heard some names mentioned in connection with it before in a general way. On the 25th of August I went again to New York, and on the 26th was admitted to and examined the apparatus, as I have stated in my first affidavit. By my direction papers were immediately prepared for this suit. My lack of positive information in regard to the ownership and use of the apparatus prevented me from proceeding earlier in the matter. I have no doubt that all of the defendants in this cause knew of my suit against Messrs. Brown and Seavey, in the circuit court for the district of Massachusetts, for infringement of my patent and the decision in my favor, for it attracted a great deal of attention at the time amongst fish-dealers throughout the country, and especially in Boston and New York, and Brown and Seavey have, for the last five years at least, had constant dealings with the defendants. My selling agents, Messrs. Middleton, Carman and Company, are large fish-dealers in Fulton market, and have been in communication almost every day with the defendants.

36

The business of freezing and preserving salmon by my patented process is one which I undertake to keep in my own hands, and for which I do not grant licenses to any one. I have devoted my whole time and care to it for the last ten years, and have made it, from very small beginnings, a large and important business, and would have enjoyed a large profit from it but for the infringement by Brown, Seavey & Co., and by the defendants in this case. It is a business which cannot be carried on to a profit beyond a limited amount of fish, which amount I am entirely prepared to keep the market supplied with. My frozen salmon come down from the provinces to Boston, and the bulk of them go at once to the New York market, and are sold through Middleton, Carman & Co. The defendants, by freezing and preserving salmon in their said apparatus by my patented method, have directly and very seriously injured my business. I have reason to believe that they will continue to do so by preserving in a frozen state for the New York market not only fish put in fresh by themselves, but fish which come frozen from Quebec and are to be preserved in New York for sale. Fresh salmon begin to come from California about the 1st of March and from the provinces about the middle of April. The history of my invention is

briefly as follows: I began my experiments in the winter and spring of 1858. In the spring 1858 I froze a few fish, principally to ascertain
37 whether fish artificially frozen would be the same as those naturally frozen. I used for this purpose a small temporary apparatus, of which "Piper Model No. 1," herewith produced, is a correct representation. This had a chamber, the air in which (being the air that the fish lay in) was reduced, and kept below the freezing-point by the influence of freezing-mixture put round the chamber, but having no communication with the atmosphere of the chamber. Suitable means of drawing off the pickle were provided. In June, 1858, I constructed and used the apparatus of which "Piper Model No. 2" is a representation. This had two chambers, the air in which (being the air that the fish lay in) was reduced and kept below the freezing-point by the influence of freezing-mixture contained in vertical tubes within the chambers, the space around the chambers being packed with a non-conducting substance, and the freezing-mixture having no communication with the atmosphere of the chamber. About the 1st of July, 1858, I froze some forty or fifty salmon in this apparatus, and preserved them in it in a frozen state till about the 1st of December following, when they were taken out, brought to Boston, and sold to Wm. M. Rogers & Co., of New York. I have furnished every year since to them and their successors salmon frozen and preserved by the same method or process.

My Patent-Office model was made in December, 1858. A similar model is produced in two parts, marked "Piper Model No. 3 *a*," and "Piper Model No. 3 *b*." In May, 1862, I put up in New York an apparatus for freezing and preserving fish by my process, for the use of my selling agents, Middleton, Carman & Co., who have so used it ever since I testified to these facts in regard to the history of my invention in the suit in Boston.

ENOCH PIPER.

38 UNITED STATES OF AMERICA,
State and District of Massachusetts, County of Suffolk, ss:

Subscribed and sworn to by the above-named Enoch Piper, at Boston, in said State, this sixth day of November, A. D. 1871, before me.

[L. S.] N. AUSTIN PARKS,
Notary Public.

United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL.

On motion of M. B. Andrus, complainant's solicitor, and on reading and filing consent of defendant's solicitor, it is hereby ordered that David F. Fox, esq., counsellor at law, of Detroit, Michigan, and James A. Wilcox, esq., counsellor at law, of Columbus, Ohio, be, and they hereby are, respectively, appointed special examiners on the part of the complainant in this suit, to take testimony therein.

Dated New York, April 16th, 1872.

Attest:

[L. S.] KENNETH G. WHITE, *Clerk.*

(Endorsed:) U. S. circuit court, southern district of New York. In equity. Enoch Piper vs. George T. Moon et al. Certified copy order

appointing special examiners on part of complainants. M. B. Andrus, complainant's solicitor, 27 Chambers street, New York.

39 Circuit court of the United States, southern district of New York. In equity.

ENOCH PIPER, COMPLAINANT,
vs.
GEORGE T. MOON ET AL., DEFENDANTS.

Testimony taken on the part of the complainant, under the 67th rule of practice for the courts of equity of the United States, by David F. Fox, duly appointed by the said court special examiner on the part of the complainant to take testimony in said cause.

Present: Jabez S. Holmes and George H. Prentis, counsel for complainant; Charles A. Kent, counsel for defendant.

HENRY T. PHILLIPS, called and sworn on the part of the complainant, deposes and says:

Q. What is your name, age, residence, and occupation?

A. Henry P. Phillips; aged 36 years; residence, No. 11 Spencer street, Detroit; occupation, the fruit, fish, game, and commission business at present.

Q. How long have you lived in Detroit?

A. For the last twenty years.

Q. Where did you live before that?

A. Wall Lake, Oakland County, Michigan.

Q. While you lived at Wall Lake, were you or were you not frequently in the city of Detroit?

A. Yes, sir; I should think over half the time; what little schooling I got I got here.

Q. How long have you been in your present business?

A. Three or four years, directly in the commission business; I think it is a little more than that.

40 Q. Before that what business were you in, and where?

A. I was in the retail and commission grocery business; retail grocery and produce commission would be a more direct answer, perhaps.

Q. While you were in that business did you deal in fish at all?

A. Yes, sir.

Q. Where was your place of business?

A. No. 40 Michigan Grand avenue—right across the street from the market.

Q. Do you mean the market where fish was sold?

A. Fish was sold in the same market. The north side of the vegetable market is occupied as a fish-market specially.

Q. How long have you known of the sale in this market of fish frozen by artificial means?

A. Three or four years back is the first, I believe, I ever knew of them.

Cross-examination:

Q. When did you first begin to deal in fish?

A. I could not tell exactly the date; I should say from six to eight years ago; should say eight years—am not positive; could tell by looking at my books.

Q. Do you know David Davis and Samuel Davis?

A. I was not personally acquainted with them; they lived in our neighborhood at that time or before.

Q. At what time do you mean?

A. Six or eight years ago or before.

Q. Did you ever have any acquaintance with their father, William Davis?

A. Not directly—in way of business; knew him well by sight.

Redirect:

Q. Before you directly were in the fish business, how frequently, if at all, were you in the market?

41 A. My business didn't put me in the market quite as much as it does now. Occasionally we had to go in the market. I didn't have any special business there—about as often as any man in my business would naturally go.

HENRY T. PHILLIPS.

Subscribed and sworn to before me this 20th day of April, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 23d instant, at 9 a. m.

The counsel for complainant puts in evidence a certified copy of letters-patent granted William Davis, June 16, 1868, for improvement in preserving meats, &c., and is marked Exhibit 1, complainant's.

DAVID F. FOX,
Special Examiner.

ALBERT F. DRAPER, called and sworn on the part of the complainant, deposes and says:

Q. What is your name, age, residence, and occupation?

A. Albert F. Draper; aged 54 years; residence, Flint, Michigan; and occupation, keeping hotel.

Q. How long have you been connected with the hotel business?

A. About fourteen or fifteen years.

Q. Were you ever employed at the Russell House, in Detroit; if so, from what time to what time?

A. I was, from the fall of 1857 to the spring of 1861—October, 1857, to April, 1861.

Q. In what situation were you employed during that time?

A. I had entire charge of the house—of its entire interests—buying supplies and keeping its accounts generally; the whole affairs of the house were in my hands; I was general superintendent; Mr. W'm Hale, whom I believe is now in California, was the proprietor.

Q. Did you know Mr. W'm Davis?

42 A. I knew Mr. Davis the elder, and one son.

Q. Did you, during your administration of that hotel, buy any fish of Mr. Davis?

A. I did.

Q. What kind of fish were they, principally?

A. If I recollect aright I bought all kinds—domestic and foreign.

D. Did you ever buy of him any artificially frozen fish?

(Objected to as leading.)

A. I wouldn't suppose I did; I don't think I did; perhaps I don't understand what you mean by artificially-frozen fish.

Q. State whether you ever bought any fish of Mr. Davis or any per-

son during the time you were in the Russell House, in a frozen state, when the weather was such that it would not freeze them.

(Objected to as leading.)

A. I don't think I ever did.

Q. State whether you ever heard of fish being frozen by any artificial process up to the time you left the Russell House.

(Objected to as leading.)

A. I never heard of any process of freezing fish except by natural temperature during that time.

Q. State your means of knowledge in regard to the purchase and use in said Russell House of artificially-frozen fish or other fish during the time you were there.

A. I made the entire purchases for the house during the three years I was there, except when sick or temporarily absent; I was at one time in New York 10 days; the trip perhaps might have occupied two weeks; and I have no recollection of being away from there longer at any one time than that; this was in the spring of 1858 or 1859; I can tell by ref-
43 erence to books or papers that I have at home; I have no recollection of being ill more than two or three or a few days at a time; my health was good generally.

Cross-examination:

Q. If frozen fish had been brought to you at that time do you think you would have known whether they were frozen naturally or artificially?

A. I might not; I never bought any frozen fish of any one except when the natural temperature might have frozen them.

Q. When did you first hear of artificially-frozen fish?

A. My recollection would be about 1867—might be 1866.

Q. Who had them?

A. I think the first I knew of them Mr. Davis had them—Mr. William Davis, I mean.

Q. Did you see at that time the box in which they were frozen?

A. He showed me a refrigerator, by which he kept in a frozen state fish and meats.

Q. Did he talk with you about it?

A. He did. He explained the principle of it.

Q. Can you describe the box?

(Objected to as immaterial and not proper cross-examination.)

A. Well, not definitely. I know it was something upon the plan of freezing ice cream, an ice-cream freezer. I think Mr. Davis told me at that time that that is what suggested the thing to him.

Q. Did he tell you how long he had used that method of freezing?

A. He did not.

Q. Where did you go when you left the Russell House in 1861?

A. Pontiac.

Q. That is about 26 miles from Detroit?

A. Twenty-five miles.

Q. Remained there till you went to Flint?

A. I did.

44 Q. Whereabouts was the box that Mr. Davis showed you?

A. Under the Russell House.

Re-direct:

Q. When did they usually catch white-fish here—at that time, what season of the year?

A. Late in the fall.

Q. In what manner were those fish kept after the season for catching?

(Objected to as not re-examination.)

A. In pounds—made of pickets driven in the ground under the water; kept alive in that way.

Q. When were they taken out of these pounds?

A. During the winter, as long as they lasted; through the ice, when there was ice. The pound I refer to, where fish were thus kept, was two or three miles below the city.

ALBERT F. DRAPER.

Subscribed and sworn to before me this 23d day of April, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned to Friday, April 26th, at 9 a. m.

Adjourned to Tuesday, April 30th, at 9 a. m.

ALEXANDER M. CAMPAN called and sworn on the part of the complainant, deposes and says:

Q. What is your name, age, residence, and occupation?

A. Alexander M. Campan; 48 years; 487 Jefferson avenue, Detroit; have no particular occupation, except the management of my property and a fishery which I own. My fishery is on Belle Isle, half of which I own.

Q. How long have you resided in Detroit?

A. I have always lived here, with the exception of three or four years.

45 Q. How long have you owned a fishery near Detroit?

A. Since 1845 or 1846 I have owned a quarter interest; I now own a half interest. There are four different fishing grounds in this interest.

Q. State the amount of fish usually caught at your fisheries in a season.

(Question withdrawn at suggestion of witness, who does not desire to state his private business transactions.)

Q. Are you largely engaged in fish business?

A. I am.

Q. When did you first commence penning fish?

A. In the fall of '63. When I speak of fish, I mean white-fish, that being about the only kind fish I catch or deal in.

Q. How many fish did you pen in the fall of 1863?

A. 55,000, as near as I can recollect.

Q. When did you first hear of artificially freezing fish to preserve them?

A. It was in the year, as near as I can remember, of 1863.

Q. To whom did you sell fish that you penned in '63?

A. Fish that I caught in the fall of '63 I sold to the firm of Wm. Davis & Sons.

Q. Did you ever have any talk with Mr. Davis, now deceased, in regard to artificially freezing fish, and, if so, when?

(Objected to as leading and incompetent.)

A. I did—of fish in connection with meat. It was in '64 or '65 and '66. In '65 I had some talk, I know.

Q. Will you state, as near as you can, the conversation?

(Same objection as above.)

46 A. I had a number of conversations with Mr. Davis with regard to the freezing of fish and meats generally—freezing of articles largely in use, as near as I can recollect. In these conversations Mr. Davis thought that fish and meats could be frozen in a box—putting ice around the box. He referred to something he had seen in the Central market, in New York, which he thought could be utilized and made valuable. That was the general purport. A year or two after, through his representations, I went down there, and saw something such as he described—a freezing-apparatus. It was a cellar, with tubes running up and down in the interior, and there were several carcasses of deer in them which I took to be in a frozen state. They were represented to me to be such. The one I saw in New York was the one Mr. Davis called my attention to.

Q. What did you understand these tubes to be filled with?

A. I don't remember positively. I took them to be filled with ice. The matter was explained to me then, but I have forgotten.

Q. Was this the first you ever heard of artificially freezing fish or meats?

A. I heard of fish being frozen, or partially frozen, in Chicago, in the year 1862 or 1863, and saw some in 1863 frozen or partially frozen—No. 12 Clark street. This was the first. The next freezing-apparatus I heard of was the one above spoken of in New York.

Q. What kind of fish were these you saw in Chicago?

A. White-fish. The apparatus for freezing I saw in New York belonged to Mr. Racey, as I understood and supposed. He showed it to me, and claimed it to be his.

Cross-examination by Mr. Kent, without waiving objections:

Q. How large was the apparatus you saw in New York?

47 A. This was, near as I can recollect, simply tubes running from the ceiling to the floor in a room about twenty-five feet square.

Q. Didn't Mr. Davis say to you he had himself before used something of the kind, only on a much smaller scale?

(Objected to as incompetent and irrelevant.)

A. I don't remember. I had a great many conversations with Mr. Davis.

Q. Did not his conversation indicate that he had considered the subject of freezing fish, &c., a great deal?

(Objected to as incompetent and irrelevant, and no part of the cross-examination.)

A. Yes; he manifested a great deal of interest in the subject.

Redirect:

Q. Have you any definite and accurate recollection of the size of that room?

A. No, sir. I recollect it was a good-sized room. There were several carcasses of deer. At one end there was a long box filled with live eels.

ALEX. M. CAMPAN.

Subscribed and sworn to before me this 30th day of April, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till May 1st, at 9 a. m.

JOHN F. ANTISDEL, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. John F. Antisdel; aged 42 years; residence, Detroit, Michigan; occupation, hotel-keeping; am proprietor of the Biddle House.

Q. 2. How long have you lived in Detroit?

A. Came here in 1850.

48 Q. 3. What has been your business since you have lived in Detroit?

A. Hotel business all the time.

Q. 4. What was your business in 1856, and where and how were you engaged in that business?

A. I was superintending the Railroad Hotel for Hiram R. Andrews.

Q. 5. What in 1857?

A. I was partner with Mr. Parshall in the Finney Hotel.

Q. 6. What in 1858, and for nine or ten years following?

A. I was the proprietor of the Railroad Hotel.

Q. 7. During the time you were superintending at the Railroad Hotel for Hiram R. Andrews, what, if any, charge did you have of furnishing supplies for that house?

A. I had the entire charge the part of the time while I was steward. I think I did most of the buying, if not all.

Q. 8. Who did the buying at Finney's Hotel the year you were there?

A. Parshall. I kept the books.

Q. 9. Who did the buying at the Railroad Hotel after you took it in 1858?

A. I did.

Q. 10. Did you ever buy, while in the Railroad Hotel, of Mr. Davis, or any other person, any artificially frozen fish?

A. Never that I knew of—that I remember.

Q. 11. When, if ever, did you first hear or know of artificially frozen fish or meats?

A. I couldn't say. It was long after that—years after. Couldn't say how long.

Cross-examination by Mr. Kent:

Q. 1. Do you remember to have bought fish of W'm Davis in 1856 or 1857?

A. I couldn't swear whether I did or did not.

Q. 2. Did you buy any fish of W'm Davis in 1858 or 1859?

49 A. The first recollection I have of buying fish of him is after they got in the store under the Russell House. I don't know when that was.

J. F. ANTISDEL.

Subscribed and sworn to before me this 1st day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

JAMES MAXWELL, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. James Maxwell; aged 40 years; residence, Detroit; occupation, hotel steward at Biddle House.

Q. 2. How long have you been engaged in the business of hotel steward?

A. About nine years, since I commenced. I have not been all the time at it.

Q. 3. Where were you first engaged in this business?

A. At the Michigan Exchange.

Q. 4. At that time had you ever heard of artificially frozen fish or meat?

A. I have no recollection of having heard of any such thing.

Q. 5. When, if ever, did you first hear or know of any such thing?

A. I couldn't say. I think the first I heard was some four or five years ago, as near as I can come to it.

Q. 6. Do you know who was steward at the Michigan Exchange before you were?

A. His name was Wright. I think he is dead.

JAMES MAXWELL.

Subscribed and sworn to before me this 1st day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 2 p. m.

50 CHARLES A. LORMAN, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Charles A. Lorman; 42 years old; residence, Hamtrainck, just out of the city limits of Detroit; occupation, the ice business.

Q. 2. How long have you been in the ice business in the city of Detroit?

A. About nineteen years.

Q. 3. Did you know Wm. Davis in his life-time, and do you know his sons, Samuel H. and David W.?

A. Yes, sir.

Q. 4. Do you remember Wm. Davis in 1857 and 1858, when he lived in Congress street east, north side, between Randolph and Brush streets?

A. Yes, sir.

Q. 5. Did you supply him with ice at that time—at that time and that place?

A. Yes, sir.

Q. 6. In what quantities?

A. In regular quantities for family use; as usually taken for a boarding-house—which takes more than other families.

Q. 7. Did Mr. Davis keep boarders at this time?

A. I think so.

Q. 8. In what manner did you deliver ice; in pieces or otherwise?

A. In pieces.

Q. 9. What sized pieces?

A. Twenty-pound pieces.

Q. 10. How many pieces per day did you deliver to Davis?

A. In hot weather a couple of pieces.

Q. 11. When, if ever, did you first hear of freezing fish or meats by artificial means?

A. In the Russell House, when Davis kept there; when I saw the Davis refrigerators, about four or five years ago, I think.

Cross-examination:

Q. 1. Did you ever deliver the ice yourself at this time?

51 A. Generally I did not; but sometimes I went around with one of my men to look after them.

Q. 2. How many ice-teams did you then have?

A. About four teams, I think. I always had from three to five teams; sometimes six.

Q. 3. Were not each of your men authorized to sell extra ice when wanted?

A. Yes.

Q. 4. Have you any way of telling how much extra ice was purchased by any one?

A. I might at the time, but now I cannot tell.

Q. Were there not at that time several places where they sold ice not far from Mr. Davis' residence in Congress street?

A. I know of about two.

Q. 6. Could not ice have been purchased at these places at any time during the day without difficulty?

A. Yes, sir.

Redirect:

Q. 1. In answer to question 4 on cross-examination you say: "I might at that time, but now I cannot tell." Would you have been likely to know it at that time?

A. If they had only taken a little extra I might not have known it at the time, but if they had taken much I would have been likely to have known it.

Q. 2. Which would have been the most expensive way to take ice—to take it out of the wagons or to buy it from time to time as wanted?

A. It wouldn't have been much different, I suppose, especially in those times. I think to take it regularly would have been a little cheapest.

Q. 3. How many ice dealers were there in the city of Detroit in 1856–'57–'58–'59–'60–'61 and '62, and who were they?

A. In '56 there were McLees, Lorman, Beal, Hulbert, and Whittaker; in '57 there were the same; I think in '58 McLees died, otherwise the same; we three firms continued till the fall of 1863; there were no others.

52

C. A. LORMAN.

Subscribed and sworn to before me this 1st day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

CHARLES S. WHITBECK, called and sworn on the part of the complainant, deposes and says:

Q. 1. Where do you reside, and what is your business?

A. Detroit; one of the proprietors of the Russell House.

Q. When did you first go into the Russell House?

A. I was there at the opening, the 28th of September, 1857; it had been closed from the preceding April; I had charge of the office at that time; Wm. H. Russell, now dead, was the proprietor at that time.

Q. 3. Did you at that time know of or hear anything about artificially-frozen fish?

A. No.

Q. 4. When did you first hear or know of artificially-frozen fish or meats?

A. I cannot say the date, but it was some time during the war.

CHAS. S. WHITBECK.

Subscribed and sworn to before me this 1st day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

WILLIAM BEAL, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. William Beal; aged 50 years; residence, Detroit. Have not
53 at present any business, but was formerly in the ice business.

Q. 2. From '56 to '62 were you in the ice business in Detroit?

A. Yes, sir.

Q. 3. Who, if any others, were engaged in the same business during that time?

A. McLees, I think, was in that business in 1857; Mr. Hulbert and Mr. Whittaker, Mr. Lorman and myself. These are included in the time from 1857 to 1862, except McLees, who died, I think, in 1858.

Q. 4. Were any of these persons in partnership; and if so, which of them?

A. Mr. Hulbert and Mr. Whittaker were partners. Am not sure whether McLees and Lorman were in partnership at that time or not.

Q. 5. Were there any others in that business at that time?

A. No, sir; none who made it a special business. Mr. William Smith, the butcher, sold some ice, I think, at that time.

Q. 6. Did you know Mr. William Davis in his lifetime, and do you know his sons Samuel H. and David W.?

A. Yes, sir.

Q. 7. Prior to the time when they lived in Lafayette street west, or Lafayette avenue, did you furnish them ice?

A. I think I did.

Q. 8. Where did they live when you thus furnished them?

A. I can't tell.

Q. 9. When did you quit the ice business?

A. In the fall of 1863.

Q. 10. For how many seasons before you quit the business, did you furnish them?

A. I think three, but am not positive of more than two.

Q. 11. When, if ever, did you first hear or know of artificially-frozen fish or meats?

54 A. I don't know that I have known of them. Have seen advertisement of them in the papers.

Q. 12. About when was the first you saw of these?

A. I think, perhaps, in the year Mr. William Davis died.

Cross-examination:

Q. 1. Can you tell the years in which you furnished ice to Mr. Davis?

A. I think in '62 and '63; perhaps in 1861.

Q. 2. How did he get the ice furnished?

A. At his house a piece was left each day. He used to come to a small ice-house in rear of the house where I lived, and get it in such quantities as he needed it.

Q. 3. Do you know the special object for which they got this ice from the ice-house?

A. For preserving fish; that I always understood it for.

Redirect:

Q. 1. Do you know how they used the ice in preserving the fish?

A. By breaking the ice in pieces and putting it in boxes and barrels, and putting in a layer of fish and a layer of ice, and so on. I have seen them pack fish in this way in their square boxes at their store.

Recross-examination:

Q. 1. When did you see these boxes in their store?

A. I think I saw them in the year 1862—I am not sure of it.

Q. 2. Where was the store at which you saw them?

A. In the Russell House block.

Q. 3. Did you ever see fish packed in the way you have men-
55 tioned by them except in their store in the Russell House block?

A. Not that I know of.

WM. BEAL.

Subscribed and sworn to before me this 1st day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

BYRON WHITAKER, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Byron Whitaker; aged 41 years; residence Detroit. I am in forwarding business now—part owner in Grand Trunk line of propellers, &c.

Q. 2. Were you ever in the ice business in Detroit; and if so, with whom?

A. I was, with Thomas J. Hulbert.

Q. 3. When did you commence in that business, and when did you quit?

A. I commenced with Mr. Hulbert in the fall of 1857. On the 1st of January, 1859, I took a half interest in the business; am not positive when I quit; in 1863 or 1864.

Q. 4. During the time you were in the business who else was engaged in it in the city of Detroit?

A. McLees, Lorman & Beal, and ourselves.

Q. 5. Did you know Wm. Davis in his lifetime?

A. I knew him by reputation, but had no personal acquaintance. I knew his son, Samuel H. Davis.

Q. 6. Did you ever furnish him with ice at any time?

A. I am not positive that I ever did. It does seem to me as though at one time, when Beal was short, that I furnished him some.

Q. 7. When, if ever, did you first hear or know of artificially freezing fish or meats to preserve them?

56 A. I think it is four or five years ago that I heard of Davis doing things of that kind. I don't know that I ever heard of any one else doing it to make a business of it.

B. WHITAKER.

Subscribed and sworn to before me this 1st day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 9 a. m., May 2d.

ROBERT MCCLATCHEY, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Robert McClatchey; upwards of 30 years old; residence, Royal Oak, Michigan; occupation, keeping books for H. A. Christiansen, in Detroit. My family reside in Royal Oak, twelve miles from Detroit.

Q. 2. Do you know Albert F. Draper, now of Flint, Michigan?

A. I do.

Q. 3. Were you employed at the Russell House, in Detroit, in 1857–'58, &c., when Mr. Draper was there; and if so, what was your business there?

A. I was employed there. I had charge of the stores and store-room of the house. I went there when the house opened, in October, 1857. The house had then been open about a month. For the first few weeks, when Mr. Russell was there, I did not have charge of the store-room.

Q. 4. Who was Mr. Russell, and where is he now?

A. He was proprietor of the house until the middle of November, when he left. He is now dead.

Q. 5. While you were employed at the Russell House did you ever see there, or know of there being used there, any frozen fish, when the weather was not cold enough to freeze them?

57 A. Yes; I have seen them frozen when the weather was not cold enough to freeze them.

Q. 6. What do you mean by that?

A. I mean that fish were frozen when I bought them.

Q. 7. Do you mean that you ever had frozen fish there in warm weather?

(Objected to as leading.)

A. No, sir; I do not.

Q. 8. Do you mean that you had frozen fish in the winter time, some days when the weather was not cold enough to freeze them that day, but had been just before that?

(Objected to as leading.)

A. I do.

Q. 9. Are these the only frozen fish you ever had there—I mean such fish as were frozen in cold weather?

(Same objection.)

A. As far as I know they are; the only kind of fish.

Q. 10. Where did these fish come from?

A. I bought fish sometimes in the market; the man took them out of a barrel. They had been packed in snow. It was the general city market.

Cross-examination:

Q. 1. Did you buy any frozen fish in November or December, 1857?

A. No, sir; in 1857 I didn't do that part of the business then, when the house first opened; I didn't commence buying till April, 1858.

Q. 2. When did you begin to have charge of the store-room?

A. About the 1st of March, 1858.

Q. 3. What was your business there prior to March, 1858?

A. I had no regular business.

58 Q. 4. Can you say that frozen fish were not purchased for, and used in that hotel in 1857, 1858, or 1859, in warm weather?

A. In 1859, I couldn't say; in 1857 the house wasn't opened in the summer. In 1858 I don't recollect of any frozen fish being there in the summer weather—in the season when they wouldn't freeze; I don't recollect anything about the fish. I never saw any frozen fish at that time.

Q. 5. If the fish had been preserved by being frozen artificially, and were thawed out when delivered, could you have told whether they had been frozen or not?

A. I think I could. I think they would have been spoiled.

Q. 6. If fish had been frozen by the weather, and then thawed out would they have been spoiled?

A. I think they would not keep many hours after that.

ROBERT McCLATCHEY.

Subscribed and sworn to before me this 2d day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 2 p. m.

JOSEPH C. HATCH, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Joseph C. Hatch; aged 40 years; residence, Detroit; occupation at present, grain and flour inspector, deputy inspector of the Detroit Board of Trade.

Q. 2. How long have you lived in Detroit?

A. Nearly 20 years.

Q. 3. Have you looked at the map of the city of Detroit here produced, marked Exhibit 2?

A. I have.

59 Q. 4. Do you know where the Cass dock is on said map?

A. I do; part of the dock is at the foot of Second street; the old dock proper, what is known as the whole Cass front, extends from between Cass and First street to Third street.

Q. 5. You mean by that the entire river front of the Cass farm, do you not?

A. That is what I knew as the Cass front when I first knew the dock.

Q. 6. Did you ever do business in the dock or warehouse at foot of Second street, lot 4, block C, Cass farm, as shown by Exhibit 2?

A. I have.

Q. 7. When and for whom?

A. The 1st of August, 1857, to 1st of March or April, 1861; I was book-keeper there for George C. Jones.

Q. 8. Did you know W'm Davis in his life-time?

A. I did.

Q. 9. Did he, during any portion of the above-mentioned time, at that place freeze fish by an artificial process, or have or use there a box or refrigerator for any such purpose?

(Objected to as leading.)

A. He did not.

Q. 10. Did either of his sons?

(Same objection.)

A. They did not.

Q. 11. Had you at that time ever heard of such thing?

A. I had not.

Cross-examination:

Q. 1. Was Mr. Davis using that dock during the time you have spoken of?

A. He was not.

60 Q. Did he ship over that dock during any part of said time, or receive goods over said dock?

A. Not to my knowledge.

Q. When did you first become acquainted with W'm Davis?

A. I don't remember; at that time I had no personal acquaintance with him; I knew him as W'm Davis, seeing him about.

Q. 4. What was he doing on the dock?

(Objected to as immaterial, and not cross-examination.)

A. I think he was engaged in shipping produce, potatoes, apples, &c., from Hurd's dock, which was across the street from where I was.

Q. 5. Did you see him there often?

A. Yes.

Q. 6. Was that his place of business at that time?

A. He appeared more as though he was what we call a street buyer—as though he bought in the streets, and made that place his head-quarters.

Q. 7. Do you know of his ever having had any business at your dock?

A. I do not.

Q. 8. Where at that time was Barnum's dock?

A. He occupied a shed or addition to the warehouse that Mr. Jones occupied.

Q. 9. Do you know whether or not Davis ever froze any fish, or had any refrigerator on Barnum's dock or Hurd's dock?

A. I do not.

Q. 10. Did you ever see Mr. Davis employed on Mr. Barnum's dock?

A. I think I have.

Q. 11. Did Mr. Barnum have a dock at that time which was called Barnum's dock?

A. I think during a portion of the time we were there common custom called a portion of Jones' dock "Barnum's dock."

Redirect:

Q. 1. Did Mr. Barnum have any dock of his own, or did he
61 simply occupy a portion of Mr. Jones' dock?

(Objected to as leading.)

A. He simply occupied a portion of Mr. Jones' dock.

Q. 2. In your answer to question 9, direct-examination, when you say he did not freeze fish, &c., there, do you mean the whole of the dock or only a portion of it?

(Objected to as leading.)

A. My answer to the question had reference to Mr. Jones' warehouse and the whole of the dock, which included the front of that part occupied by Mr. Barnum.

Q. 3. State whether or not he ever did anything of the kind in the shed or addition occupied by Barnum?

(Objected to as leading.)

A. Not to my knowledge.

Q. 4. How often where you in the habit of being in Barnum's addition?

A. All the way from half a dozen times a day to once in two or three days; during the season of navigation, probably two or three times every day.

Q. 5. What kind of a building was the Jones' warehouse, and what the Barnum addition—I mean wood or brick?

A. Jones' warehouse, wood; the addition, brick; the wood stood on the line of Second street. The brick was east.

J. C. HATCH.

Subscribed and sworn to before me this 2d day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

62 JOHN G. IRWIN, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, residence, and occupation?

A. John G. Irwin; residence, Detroit; occupation, commission and insurance.

Q. 2. Were you formerly in business with Wm. G. Catlin, under the firm-name of Catlin & Irwin, in the city of Detroit?

A. Yes.

Q. 3. Where was your place of business?

A. At the foot of First street on the river, dock and warehouse on lot 1, block C, Cass farm, as shown by Exhibit 2.

Q. 4. When did you go into partnership with Mr. Catlin, and when did the partnership terminate?

A. In the spring of 1856 the copartnership was formed, and it terminated January 1st, 1859.

Q. 5. Did Mr. Wm. Davis, now deceased, or his sons, occupy the dock or warehouse, or any portion of the same, of Catlin & Irwin for the purpose of freezing fish, packing fish, or for any other purpose?

(Objected to as leading.)

A. I cannot remember that he did.

Q. 6. Have you made any investigation to ascertain whether he did or not?

A. I have.

Q. 8. Please state the result.

A. I cannot find from my books that they ever occupied a portion on my dock or warehouse.

Cross-examination:

Q. 1. Would your books show anything about it if Davis simply rented for a brief time the privilege of receiving his fish and other stock over your dock?

A. I think they would.

Q. 2. Suppose he paid his rent in cash in advance, why should the books show anything about it?

A. It is possible that in that case it may have been credited
63 to dockage or storage, instead of Wm. Davis or sons.

Q. 3. Did the Sandusky or Cleveland boats leave your dock?

A. The Sandusky boat did; the Cleveland did not.

Q. 4. Suppose that the only agreement that Mr. Davis had with you was, that he should ship his stuff over your dock and pay a certain amount of dockage, would your books be likely to show anything about it?

A. I think not.

Q. 5. In that case would you be likely to remember anything about it?

A. I think not.

Q. 6. Were there not many persons who shipped over your dock who paid you simply dockage?

A. Yes.

Q. 7. What attention, if any, did you give at that time to the dockage business?

A. I didn't give much attention to the dockage business.

Q. 8. Who had charge of that business?

A. Mr. O'Grady—Bernard O'Grady, who is now dead.

Q. 9. Were you acquainted with Wm. Davis during his lifetime?

A. Can't be positive whether I knew him between 1856 and 1859, but I knew him before he died.

Q. 10. Did Catlin & Irwin occupy, at that time, the whole of the warehouse in which they were?

A. I think that they occupied the whole premises.

Re-direct:

Q. 1. Would it be likely that any person would ever ship goods across your dock for any great length of time without their names appearing in your books?

A. It is possible that they might have appeared on petty book, and not go on my ledger. I think it would be probable that it might be so.

64 Q. 2. Would it be probable that any other use could be made of the dock or warehouse, without appearing on the books?

A. I think it hardly probable that any use of the warehouse could be made, without it appearing on the books.

Recross-examination:

Q. 1. Would the name of any such party have appeared on your books unless you kept an account with him?

(Objected to as not being recross-examination.)

A. I think if we had been paid for the use of any part of the warehouse, an account would have been opened with him.

Q. 2. If a party had simply taken in goods at your warehouse, and had shipped over your dock, and had paid only by dockage which followed the articles shipped, would any account with him have appeared on your books?

A. No.

(Question objected to, as not cross-examination and as being asked before.)

JOHN G. IRWIN.

Subscribed and sworn to before me this 2d day of May, 1872.

DAVID F. FOX.

GEORGE C. JONES, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. George C. Jones; aged 46 years; residence, Detroit; occupation at present, in the manufacture of willow ware.

Q. 2. How long have you resided in Detroit?

A. Eighteen years.

Q. 3. Did you ever do business in the warehouse and on the
65 dock at foot of Second street, lot 4, block C, as shown by Exhibit 2, Cass farm, and if so, when?

A. Yes, sir; I commenced business there in 1857; can't state positively in 1857 at what time; my books were opened August 6th, 1857; my impression is, that I was there some time before that. I continued in business there until 1862, I think.

Q. 4. Did you, during any of that time, rent any part of the premises to J. W. Barnum?

A. I rented the brick part to him; my lease was for five years, and his was for the same.

Q. 5. Did you know Wm. Davis at that time?

A. I knew a Mr. Davis—I didn't know his given name, and I don't now; he was the father of David W. Davis and Samuel H. Davis.

Q. 6. Did Mr. Davis or his sons, during the time you occupied this

dock and warehouse, freeze fish there by artificial means, or have or use there any box or refrigerator for any such purpose?

A. Not to my knowledge; I have no recollection of seeing anything of the kind there.

Q. 7. How often were you in the Barnum addition?

A. Well, I presume every day.

Q. 8. Was that the docks known as the Collins & Vorce dock?

A. It had formerly been occupied by them, but I don't know whether it was called by their name or not.

Q. 9. When, if ever, did you first hear of artificially-frozen fish?

A. I don't know anything about it at all.

GEO. C. JONES.

Subscribed and sworn to before me this 2d day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

ARTHUR TRESS called and sworn on the part of the complainant, deposes and says:

66 Q. 1. What is your name, age, residence, and occupation?

A. Arthur Tress, aged 30 years; residence, Detroit; occupation, manager of the Commercial Agency of Tappan, McKillop & Co., in Detroit.

Q. 2. How long have you resided in Detroit?

A. About eight years.

Q. 3. Have you made any effort to ascertain whether or not two barrels were shipped by United States Express from Detroit, to Robert Keith at Cincinnati, in March, 1858?

A. I have.

Q. 4. What has been the result of such effort?

A. I have learned that the books of the company of that date are destroyed, so that there is no means of ascertaining, through the express company, whether the barrels were shipped or not.

ARTHUR TRESS.

Subscribed and sworn to before me this 2d day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

WILLIAM SMITH, produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. William Smith; aged 53 years; residence, Detroit; occupation, a butcher.

Q. 2. You have been in the habit, for a number of years, of putting up ice in the city of Detroit?

A. Yes.

Q. 3. Did you know William Davis in his lifetime?

A. Yes, sir.

67 Q. 4. Did you ever furnish him with ice?

A. No, sir.

WILLIAM SMITH.

Subscribed and sworn to before me this 2d day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till May 3d, at 9 a. m.

HIRAM R. JOHNSON, a witness called and sworn on the part of the complainant, deposes and says :

Q. 1. What is your name, age, residence, and occupation?

A. Hiram R. Johnson; aged 57 years; residence, Detroit; occupation, paving business.

Q. 2. Did you know William Davis in his life-time?

A. I did.

Q. 3. Did you ever rent any premises to him ; and if so, when?

A. I rented premises to him; when he took possession, I can't state. I believe he took possession in the fall of 1856, or the first part of winter of 1856 or 1857. It was cold weather. I recollect it well.

Q. 4. Where were those premises?

A. The premises occupied were on lot 1, old claims, north side of Congress street, Brush farm, block 5, as shown by Exhibit 2.

Q. 5. What kind of buildings did you have there?

A. Had a row of three brick stores, with dwellings over, occupying lot 1, above mentioned, and lot 2, adjoining.

Q. 6. What part of this building did Mr. Davis occupy?

A. The two upper stories, over lot 1, on the east end of the row.

Q. 7. Was there any barn or cellar attached, or rented with that?

(Objected to as leading.)

68 A. None rented with the dwelling.

Q. 8. Did you rent either to Mr. Davis at all—either barn or cellar?

(Same objection.)

A. I did not.

Q. 9. How long, as near as you can remember, did Mr. Davis occupy this dwelling?

A. I think not to exceed a year.

Q. 10. Do you know where he moved to when he left there?

A. He moved on to Cass street, to the Paton House.

Q. 11. Did you have any business relations or connections with him during the time he occupied your premises?

A. It would seem to me not, during that time; and it might have been in that time, too.

Q. 12. What business relations, if any, did you have with him?

A. I advanced him money for the purchase of potatoes. I am positive that it was in the fall of '57.

Q. 13. What was your method of doing business with him at that time, and for about what length of time did it continue?

A. I advanced him money, and measurably trusting to his honor to return the money as fast as the shipments were made, the potatoes remaining mine as security. It might have been less or more than a month that this continued. My impression is that it would be fully a month.

Q. 14. When, if ever, did you first hear of freezing meats or fish by artificial means?

A. I can't tell how long ago it is. I know where the Davis' were located at the time I did first hear of it. It was in the Russell House block, near where they are now.

Q. 15. About what year was it?

A. It hasn't been a great many years. It seems to me it was since the close of the war that I heard of it, but it might have been before.

69 Cross-examination:

Q. 1. Was there not in the rear of the building leased to Mr. Davis an out-house or barn?

A. There was an out-house that went with the dwelling; I mean a privy. There was also, in the rear of the store, a shed and barn, both.

Q. 2. Did not Mr. Davis at that time occupy one or both of these?

A. If he occupied them I don't know it; they were not rented to him by me.

Q. 3. Were they at that time rented to any one else; if so, to whom?

A. Yes, sir; they were to Sprague & Williams, I think—bakers. They occupied the shed and barn for their wood and horses.

Q. 4. Do you know that they occupied this shed and barn all the time Mr. Davis was in that house?

A. I don't know about their occupancy; they were there, and had the lease of it.

Q. 5. Did Sprague & Williams at that time occupy the store underneath the house Davis occupied?

A. I believe they did.

Q. 6. Did they occupy the shed and barn, or have a lease of them, except when they had a lease of the store?

A. No; Sprague & Williams, the bakers, had a lease of the store, shed, and barn. At one time the bakers occupied the middle store as well as the end store. I always rented to the bakers, whatever bakers were there, the shed and barn. I think, however, they occupied at this time the end store.

H. R. JOHNSON.

Subscribed and sworn to before me this 3d day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

GEORGE WEBER, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

70 A. George Weber; aged 59 years; residence, Detroit; occupation, none at present.

Q. 2. Do you know the dock and warehouse at foot of Second street, lot 4, block C, Cass farm, occupied by George C. Jones in 1857?

A. Yes, sir.

Q. 3. Do you now own the hotel called the Detroit Exchange, on the opposite side of Front street from said dock and warehouse, and did you own it in 1857?

A. I did, and I own it now.

Q. 4. Did you live there in 1857?

A. That I couldn't say exactly. I generally got my rent there and was around there. I can't tell whether I lived there or not without my books. I live next door now. I don't know exactly whether I lived there then; I think I did. I think I lived there when Jones got his sign painted on the warehouse.

Q. 5. Do you remember of Barnum occupying the shed or addition to the Jones warehouse?

A. I do.

Q. 6. How often were you in and out of that warehouse and addition at this time?

A. I suppose most every day, or every other day, and sometimes two or three times a day.

Q. 7. Mr. Weber, did you ever see at that place any artificially frozen fish, or any box or refrigerator for thus freezing fish?

(Objected to as leading.)

A. What place did you mean—the storehouse?

Q. 8. Yes; I mean the storehouse. I mean the Jones warehouse—Barnum's addition and dock.

A. No, sir.

Q. 9. When, if ever, did you first hear or know of thus freezing fish?

A. I think in '67.

Q. 10. Did you know W'm Davis in his life-time; and do you know his sons, Samuel H. and David W.?

71 A. Yes, sir.

Q. 11. Did you ever own a fishery; and if so, when and where?

A. I do own a fishery down at Fort Wayne, town of Springwells, three miles and a quarter or so from the city. The fishery is adjoining the Fort Wayne premises, on the line.

Q. 12. Did you ever sell the Davis's any fish? If so, when and what kind?

A. Some white-fish in 1867—1865 and 1867; I should think those two years.

Cross-examination:

Q. 1. When did you first pen fish?

A. I should think 1868 or 1869. I can't say exactly.

Q. 2. How long have you lived where you now are?

A. Twenty-five years at least—more. I lived there before they built the storehouse.

Q. 3. All the time?

A. No, sir; not all the time.

Q. 4. What and how many years were you away from there?

A. About three or four years. I can't tell what years.

Q. 5. Were not 1857 and 1858 two ot those years?

A. I couldn't tell.

Q. 6. When away, where did you live?

A. I lived—the first I lived about half a mile down, where the tannery is; about half a mile from the city-hall The second, I lived down to the fort; that is where I have got the fishery.

Q. 7. Do you know what years you lived down at the fort where your fishery is?

A. No; I couldn't tell.

Q. 8. Do you know that in 1857 you ever went into what was then Barnum's warehouse, on the dock you have mentioned?

A. I know he was selling butter, produce, eggs, and that kind; yes, I went there all the time so long as he was there—I mean J. W. Barnum's.

72 Q. 9. How often did you go into his warehouse at that time?

A. I should think I was there every day, because I was not in business.

Q. 10. Did you go there every day when you lived down near the tannery?

A. No, sir.

Q. 11. How often did you go there then?

A. Well, I couldn't tell. I think Barnum didn't keep there at that time. I think it was Collins Kertcherill kept there then.

Q. 12. When did you first know W'm Davis?

A. I think I first knew him in 1866 or 1867, when I sold him fish. I had heard his name mentioned and seen his sign up perhaps two or three years before, but I did not know him.

GEORGE WEBER.

Subscribed and sworn to before me this 3d day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

WILLIAM R. DODSLEY, called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. William R. Dodsley; age, 32 years; residence, Detroit; occupation, marine clerk in the custom-house in Detroit.

Q. 2. Have you examined the registry in your office showing the different owners and masters of the steamboat United from the year 1852 to the year 1859?

(Objected to as incompetent and leading and irrelevant.)

A. I have examined the copies of the licenses issued for those four years—the books containing the licenses.

Q. 3. Will you state from such examination who were such owners and masters during that time?

(Same objection.)

73 A. Between the years 1852 and 1859, there is Oren Davenport, owner and master, license dated 7th May, 1852. On the 13th May, 1853, Joseph Raymond appears as managing owner and master. January 5th, 1854, John Pridgeon, managing owner and master. 9th of February, 1855, Pohn Pridgeon, owner and master. August 6th, 1855, Levi H. Buzzard, owner and master. August 20th, 1856, Levi H. Buzzard, owner and master. August 18th, 1857, Levi H. Buzzard, owner and master. August 16th, 1858, George Harrow, owner and master. August 20th, 1859, George Harrow, owner and master.

WILLIAM R. DODSLEY.

Subscribed and sworn to before me this 3d day of May, 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 2 p. m.

WILLIAM BURKE, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, and where do you reside?

A. William Burke. I reside in Detroit.

Q. 2. Do you own the easterly or southeasterly half of lot 19, section 7, Govenor & Judge's plan of the city of Detroit, westerly side of Miami avenue; and if so, from whom and when did you purchase it?

A. I own it. I bought of Mr. Tuttle. I think it is Almiran Tuttle. On the 28th day of May, 1857, the deed was made to me.

Q. 3. What kind of a building then stood and now stands on said premises?

A. It is a double frame-house.

Q. 4. Do you occupy any portion of that house now; and if so, which part?

A. I occupy what I would call the east part of the house, the part toward John R. Street.

74 Q. 5. Do you now know, or did you ever know, a man by the name Peter Jarrait, a wagon-maker or carpenter and joiner?

A. I never did, to my knowledge; don't remember any such man; don't think I ever knew.

Q. 6. Did any such man live in the house where you now live, in the spring of 1857?

A. Not that I know of.

Q. 7. Do you know where the Barns house in that block was at that time? If so, please state—with reference to this house, I mean.

A. The next house, standing right on the line east of me toward John R. Street.

Q. 8. When you speak of the east half of lot 19, you mean as shown on map marked Exhibit 2?

A. Yes.

Cross-examination:

Q. 1. Do you know who lived at that house prior to the time when you bought it?

A. No. I only know who was living in it when I went into it. There were two families in it when I bought it.

Q. 2. Did you move into it yourself when you bought it?

A. No, sir.

Q. 3. When did you first move into it?

A. I couldn't tell exactly. I wasn't in Michigan at the time my family moved into it; they moved in the same summer of 1857, prior to July; I came home in July and found them in.

Q. 4. Do you know who lived in the house after you bought it, and before your family moved in?

A. Yes, I do. A Mrs. Tyler lived in the part that I have always occupied and occupy myself.

WILLIAM BURKE.

Subscribed and sworn to before me this 31 day of May, 1872.

DAVID F. FOX,
Special Examiner.

75 EDMUND TROWBRIDGE, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, residence, and business?

A. Edmund Trowbridge; reside in Detroit; business, a merchant.

Q. 2. Do you know where the De Garmo Jones dock is; and if so, where is it—between what two streets?

A. There is one dock belonging to the Jones estate at the time I occupied it, at the foot of Shelby street, and between Shelby and Griswold streets.

Q. 3. How was that dock known—by what name?

A. It was known under two names while I had it. The first firm that occupied the dock was Pitman, Trowbridge & Jones. I don't know that there was any special name for the dock. The next firm was Trowbridge & Jones.

Q. 4. Do you know of any other dock in that neighborhood belonging to the Jones estate?

A. The dock adjoining on the east the one we occupied belonged to the Jones estate.

Q. 5. Who occupied that?

A. A. E. Bissell.

Q. 6. For how long?

A. I think for six years that I was in that warehouse Bissell occupied it.

Q. 7. What Jones estate was this?

A. De Garmo Jones.

Q. 8. When did you first go on to that dock, and when did you leave it?

A. I wa'n't on the dock, or in the warehouse, in the winter of 1852. My business connection with the warehouse and dock closed on the 1st of January, 1858.

Q. 9. Who succeeded you in that dock and warehouse?

A. De Garmo Jones, son of the above-mentioned De Garmo Jones.

Q. 10. Is he alive now?

A. He is not.

76 Q. 11. Did you know W'm Davis in his life-time, and do you know his sons?

A. I knew W'm Davis. I don't think I would know his sons if I saw them.

Q. 12. Did W'm Davis during the time you were in that warehouse occupy any portion of it, or of the dock?

A. He did not.

Q. 13. Did any one freeze fish there by artificial means, or have there, for the purpose of thus freezing fish, any apparatus or refrigerator?

(Objected to as leading.)

A. Not while I occupied it.

Cross-examination:

Q. 1. Did the Sandusky boats stop at your dock at that time?

A. They did not.

Q. 2. Did you ever see William Davis at that time on any dock near there engaged in business?

A. Not to know him.

Q. 3. When did you first know William Davis?

A. I should think about five years since, when I got a refrigerator of him.

E. TROWBRIDGE.

Subscribed and sworn to before me this 3d day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

J. HUFF JONES, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, residence, and business?

A. J. Huff Jones; residence, Detroit; business, have charge of the De Garmo Jones estate.

Q. 2. How long have you had charge of the business of the Jones estate?

A. About twenty-five years—since my uncle, De Garmo Jones, died.

77 Q. 3. Can you state where the Jones dock is located?

A. It would be properly at the foot of Shelby street if Shelby street extended to the river. It would lie principally east of that, and about fifty feet west of Shelby street, as shown by the red square on Exhibit 2.

Q. 4. Were you one of the firm of Trowbridge & Jones?

A. I was not. I was a member of the firm of Pitman, Trowbridge & Jones, which preceded Trowbridge & Jones. That Jones was my cousin, De Garmo Jones, the younger, who succeeded Trowbridge & Jones.

Q. 5. What part of this red block, shown on Exhibit 2, was occupied

by Pitman, Trowbridge & Jones, Trowbridge & Jones, and De Garmo Jones, the younger?

A. The western part, next to Shelby street—that part west of the blue line, shown on Exhibit 2.

Q. 6. Who occupied the easterly part at that time?

A. John Huchings & Co., I think.

Cross-examination:

Q. 1. Did the Sandusky boat stop at any part of this dock in 1856, 1857, or 1858?

A. I don't know, sir. I wasn't familiar with the lines, only that the Cleveland boat stopped there.

J. HUFF JONES.

Subscribed and sworn to before me this 3d day of May, 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till May 4th at 9 a. m.

EUGENE ROBINSON, a witness produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Eugene Robinson; 34 years of age; residence, Detroit; occupation, city surveyor.

78 Q. 2. How long have you been city surveyor?

A. Over 10 years.

Q. 3. Did you get a map, Exhibit 2, and is it a correct map of the city?

A. I did, and it is believed in general to be correct.

Q. 4. How long have you lived in Detroit?

A. About 25 years.

Q. 5. Are you familiar with Adams avenue?

A. I am.

Q. 6. Do you know that part of Adams avenue between Woodward avenue and the next street east of it?

A. I do; the next street east is Williams street.

Q. 7. Have you known that portion of Adams avenue ever since you have lived in Detroit?

A. Yes, sir.

Q. 8. What is there now, and has there been ever since you lived in Detroit, on the south side?

A. The Grand Circus Park.

Q. 9. What, if any, buildings have ever stood on the north side of Adams avenue, since you have lived in Detroit, between those streets?

A. Nothing but a stone church and one brick dwelling. There used to be an old barn standing way back in the fields, but not on the street. This brick house was built about 8 or 9 years ago.

EUGENE ROBINSON.

Subscribed and sworn to before me this 4th day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

AUGUST SCHULTE, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. August Schulte; age, 32 years; residence, 170 Lafayette street

east, Detroit; occupation, upholsterer at Marcus Stevens' furniture establishment.

79 Q. 2. About how long have you resided in that immediate neighborhood?

A. 23 years.

Q. 3. What is your father's name, and is he now dead?

A. Francis Schulte. He is now dead; died 23d January, three years ago.

Q. 4. Do you know Samuel Berlin and his mother, Maria?

A. Yes, sir.

Q. 5. Did they ever occupy any of your father's houses?

A. Yes, sir; two of them. They lived first in house 156, south side of Lafayette street east; then right opposite this place, north side of same street.

Q. 6. About how long did they live together in both these houses?

A. To my knowledge, between six and seven years.

Q. 7. When did they leave the house on the north side of the street?

A. The exact month I cannot tell. That was in the spring of 1867; think it was in March or April we tore down the house.

Q. 8. Does Samuel Berlin know you now?

A. Yes, sir.

Q. 9. Does he know your surname or not?

(Objected to as leading.)

A. Yes, sir; I meet him on the street and he calls me Schulte.

Q. 10. Whose house did they move into when they first came to Detroit?

(Objected to as leading.)

A. My father's, No. 156 south side of Lafayette street east.

Cross-examination:

80 Q. 1. How do you know that it was only six or seven years that Berlin and mother lived in your father's house?

A. Because up to '60 there was white people living in them, except Mr. Clark, who had lived there before and afterwards lived in there again.

Q. 2. How do you know that prior to 1860 no colored people except Clark lived there?

A. Because there were white people living in there. Peter Surmmerhoff lived there. McDonald lived in the other part—the other part of the same house; there are three parts, in each of which different tenants lived. Clark moved out and other people, a white shoemaker, moved in; Surmmerhoff moved out in September, 1868. Two white women then moved in, who lived there two or three months and were then put out.

Q. 3. Who lived in each of these parts in 1857?

A. Surmmerhoff lived there I know—he lived there two years; he came there in 1856 and stayed there till September, 1858; he moved in there in 1856, and moved out in 1858. The shoemaker lived there about the same time, but how long he stayed I don't remember.

Q. 4. Question repeated.

A. Peter Surmmerhoff lived in one; Clark lived there; and who lived in the other part I don't know. There were no colored people lived there but Clark.

Q. 5. How do you know Surmmerhoff moved into one part in 1856?

A. I know that in 1855 he lived in father's front house—front part of father's house; then that same year he went to Grosse Point and lived with his father-in-law there. In 1856 he came back, and father

tearing down the old back part of this house, and then he asked him whether he would have a place for him, and he told him if he would wait a week or two until he got that back addition ready he could get in that part there in this house, 156, and in October, 1856, he moved in and stayed there till about the middle of September, 1858.

81 Q. 6. How do you know that it was 1855 that Surmmerhoff lived in the front part of your father's house?

A. I know that by mother. I seen him there but did not know what year. He boarded there before he got married, too.

Q. 7. Do you know what the year was, except from what your mother has told you?

A. He told me himself besides. I didn't know the year.

Q. 8. Who lived in each of these three parts in 1856?

A. That I don't know. We only got the deed of it in 1856, of W'm Hale.

Q. 9. Who lived there after you got the deed?

A. I don't know no names. There were no colored people living in the house.

Q. 10. When did Mr. Clark move into one of those parts?

A. I think the first time it was 1857.

Q. 11. What month in 1857?

A. I couldn't say.

Q. 12. Do you know it was in 1857?

A. I am pretty positive, because mother and Surmmerhoff both said that Clark lived there at that time.

Q. 13. Do you know anything about it, except what your mother and Surmmerhoff have told you?

A. About the year, I do not.

Q. 14. Do you know who lived in each of these three parts in 1858?

A. Yes. Surmmerhoff lived in one, and a shoemaker, I forget his name; I could bring in his name; and the other part I don't know who lived there. There was two women lived there.

Q. 15. Have you any record of the persons who lived from 1856 to 1860 in these parts of your father's house?

A. No, sir.

82 Q. 16. How do you know that no colored persons except Clark lived there prior to 1860?

A. I know it through my mother and sister, who attended to the business for my father. My sister attended to it.

Q. 17. Do you know anything about it of your own knowledge?

A. I do not, about the year, but know that there was no colored people there, as my mother says, before Mrs. Berlin moved in, except Clark.

Q. 18. Do you know of your own knowledge that Mrs. Barlin did not move in in 1856 or 1857?

A. Yes, sir.

Q. 19. How do you know it?

A. Because I helped my father to tear down the old addition in 1856, and there was no colored people in then. When we got the house done there was three white families moved in—rented it to three white tenants. In the latter part of 1857 Clark moved in—the first colored family.

Q. 20. How do you know that it was in 1856 that you tore down the old addition?

A. I know it through my mother's word, and through Mr. Surmmerhoff's words, that after he came back from Grosse Point he lived in father's kitchen until he got the new house done; that is, father's kitchen. He had a little room up stairs where he slept.

(The above testimony concerning the years is all objected to, because founded not on the witness's personal knowledge, but on hearsay.)

Q. 21. How do you know that Mrs. Berlin had not lived in the city before she came to your house?

A. She told my folks so.

Q. 22. Is that all you know about it?

A. Yes, sir.

(All the testimony as to the time of Mrs. Berlin's coming to the city is objected to as founded on hearsay and not on the witness's personal knowledge.)

83 Redirect:

Q. 1. When did your father buy that house?

A. I think it was 1854. He got the deed of it in 1856.

Q. 2. When were you married?

A. 1862, 16th day of October.

Q. 3. How large a boy was Samuel Barlin at that time, and what did he do, and where did he live?

A. I should have judged him between the age of twelve and fifteen years. He lived on the south side of street, in No. 156; when I was married he lived there. His mother said he was bell-boy in the Russell House. In 1864 he did scrubbing up stairs in my own house for Mrs. Abel.

AUGUST SCHULTE.

Subscribed and sworn to before me this 4th day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

THEOPHILE ANCIEUX, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. Are you custodian of the records, births, marriages, and deaths of St. Ann's church, in the city of Detroit?

A. Yes.

Q. 2. Have you examined those records for the years 1855, 1856, and 1857?

A. Yes, sir.

Q. 3. Do you find a record of the death of a daughter of Peter Jarrait; and if so, when?

(Objected to as leading and incompetent.)

A. Yes, sir. On the 25th of August, 1856, Josephine Jarrait was buried.

Q. 4. Was there any other daughter of Peter Jarrait buried from that church in those years?

A. I think not. I have looked over the records and find none.

84 Cross-examination:

Q. 1. How long have you been custodian of those records?

A. Since I have been there—nearly four years.

Q. 2. Did you reside in Detroit before you had charge of the records?

A. No, sir.

T. ANCIEUX.

Subscribed and sworn to before me this 4th day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

MRS. MARTHA J. JOHNSON, (colored,) a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, and where do you reside?

A. Martha J. Johnson; aged fifty years; I reside No. 136 East Lafayette street, Detroit.

Q. 2. Do you know Samuel Barlin and his mother, Maria Berlin?

A. Yes, sir.

Q. 3. Do you remember where they went to live when they first came to Detroit; if so, what makes you remember?

A. Yes, sir; they lived right in front of my house, in Mr. Schulte's, on East Lafayette street. One reason for remembering this is, that I always hired the old lady to help me work.

Q. 4. Is there any other reason why you remember where she went to live when she first came to the city?

A. She was a widow woman and wanted to get a house, and I showed her Mr. Schulte's; that is the only reason I have.

Q. 5. When was it that she went to Mr. Schulte's house?

A. Just as soon as ever she rented the house; don't remember what month or what day it was.

85 Q. 6. Was it before or after the war commenced?

A. It was after the war commenced.

Cross-examination:

Q. 1. Can you tell the year to which you refer?

A. I think it must have been in 1860, but don't know.

Q. 2. Do you know it was not in 1856?

A. I do, if I know anything at all.

Q. 3. How do you know it?

A. The war began in 1860—I don't remember what date it was, but know it was in 1860, because the war began in 1860.

Q. 4. How do you know Mrs. Barlin had then first came to Detroit?

A. She told me so.

Q. 5. When did she tell you so?

A. She told me so when she first came here.

her
MARTHA J. + JOHNSON.
mark.

Sworn and subscribed to before me this 4th day of May, A. D. 1870.

DAVID F. FOX,
Special Examiner.

Adjourned till 2 p. m.

CHARLES F. PELTIER, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, residence, and occupation?

A. Charles F. Peltier; residence, Detroit; occupation, real estate and insurance agent.

Q. 2. About how long have you been engaged in that business?

A. About twelve years.

Q. 3. Have you examined the Detroit city directories from 1855 to 1871, inclusive, for the names of Samuel Barlin and Maria Barlin?

A. I have.

86 Q. 4. When is the first year that the name Barlin appears?

(Objected to because incompetent.)

A. 1862.

Q. 5. From that time until 1871 inclusive, how often does it appear?

(Same objection.)

A. It appears in 1863, 1864, 1865, 1866, 1867. Maria Barlin's appears in all those years. 1868, Samuel Barlin's name appears. 1869 and 1870, Maria Barlin's name appears. 1871, both names appear. The directory shows that they are colored. I found no other name of Barlin.

Q. 6. What number and street appears in the directory of 1862?

A. 156 Lafayette street east.

Q. 7. Do you know Peter Jarrait, a wagon-maker, carpenter, &c.?

A. Yes, sir.

Q. 8. Where did Peter Jarrait live, as appears from the directory of 1856 and 1857?

(Objected to, as incompetent.)

A. In St. Lawrence street, Detroit.

CHARLES F. PELTIER.

Subscribed and sworn to before me this 4th day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Mrs. SIDNEY CLARK, (colored,) a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name and residence?

A. Sidney Clark. Residence on Fort street, East Detroit.

Q. 2. Did you ever live in Mr. Francis Shulte's house on the south side of Lafayette street east?

A. Yes, sir; at two different times.

87 Q. 3. Do you know Samuel Barlin and his mother, Maria Barlin?

A. Yes, sir; I know them both.

Q. 4. Did they ever live in this house of Mr. Schulte's, where you lived?

A. Yes, sir; I found them there when I went back.

Q. 5. Did they live there during the first time you lived there?

A. No, sir; they did not.

Q. 6. How long were you gone?

A. I was gone five months. Found them there when I went back.

Q. 7. Was that before or after the war had commenced, that you found them there?

A. It was after the war had commenced.

Cross-examination:

Q. 1. How long were you in Mr. Schulte's house the first time?

A. The first time I was there, I can't tell how long I stayed. I was there a good while.

Q. 2. Was it six months?

A. I couldn't tell you whether it was six months or not.

Q. 3. Was it before or after the war begun, that you were there the first time?

A. No, sir; the war hadn't begun when I was there the first time.

Q. 7. How long was it before the war when you were there the first time?

A. I can't tell you how long.

Q. 5. Was it six months before the war, or less?

A. I couldn't tell you whether it was six months or not.

Q. 6. Do you know in what year it was when you first saw Mrs. Barlin?

A. No, sir; I do not.

Q. 7. Where did you live before you went into Mr. Schulte's house the first time?

A. I lived in a man's house on Hastings street—Mr. Luetticke's house.

88 Q. 8. How long did you live there?

A. I lived there two years.

Q. 9. How long did you live in Mr. Schulte's house the second time?

A. I didn't live there very long, but I couldn't tell you exactly.

Q. 10. Was it not several years before the war that you lived in Mr. Schulte's house the first time?

A. Yes, sir.

Q. 11. How long after you moved out did you move back into his house again?

A. When I moved back in his house, I was out five months.

Q. 12. Can you read or write?

A. No, sir.

Q. 13. How do you know it was after the war begun that you moved back into Mr. Schulte's house?

A. I heard everybody talking about it.

Redirect:

Q. 1. Which place did you live the longest, at Mr. Luetticke's or at Mr. Schulte's, the first time?

A. I lived longest at Mr. Schulte's.

Q. 2. When you answered Mr. Kent that it was several years before the war began that you lived at Mr. Schulte's house, did you mean when you first went in, or when you moved out?

A. When I first went in.

Recross-examination:

Q. 1. How long before the war was it when you went out of Mr. Schulte's house the first time?

(Objected to as not cross-examination of the re-examination.)

A. I couldn't tell you.

Q. 2. About how long?

A. I can't tell exactly.

Q. 3. Was it as much as three years before the war when you went out of Mr. Schulte's the first time?

89 A. I don't recollect it was three years; I don't recollect it at all.

Q. 4. Do you know whether it was six years or not?

A. No, sir; I do not know whether it was six years or not.

Redirect:

Q. 1. When you left Schulte's house the first time where did you go?

A. I went to a widow woman named Watson.

Q. 2. How long were you there?

A. I was there five months.

Q. 3. When you went back after the five months, did you find Mrs. Berlin there?

(Objected to as leading.)

A. Yes.

Q. 4. Had the war commenced then?

A. Yes, sir.

Q. 5. Had the war commenced when you left there five months before?

(Objected to as leading.)

A. I don't know that; I heard them talking about the war when I was working at Mrs. Watson's.

her
MRS. SIDNEY + CLARK.
mark.

Subscribed and sworn to before me this 4th day of May, A. D. 1872.
DAVID F. FOX,
Special Examiner.

Adjourned till 7 p. m.

LEVERETTE N. CASE, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

90 A. Leverette N. Case; 29 years old; residence, Detroit; occupation, assessor and collector of water rates of western district of Detroit.

Q. 2. Have you examined the books in the water-works office which would show who occupied the easterly half of a house standing in lot 14, Brown's subdivision of park lots, being on the northerly side of Adams avenue, and between Woodward avenue and the next street west thereof, for the years 1856, 1857, 1858, and 1859?

A. I have.

Q. 3. Can you tell who occupied the easterly half of that house that time, or any portion of it?

(Objected to, because the evidence is incompetent, being but hearsay.)

A. No.

Q. 4. What, if anything, can you tell about it?

A. I can tell that J. L. Langley was assessed for water rates, May 1st, 1856, and commenced paying from that time, and, according to our regulations, must have been either owner or occupant. The same assessment was made in May, 1857, against the same man, J. L. Langley, and May, 1858; and that in May, 1859, Dr. Day was assessed for the same premises. Those answers are according to the records in the water office.

(Testimony all objected to as incompetent, because mere hearsay.)

LEVERETTE N. CASE.

Subscribed and sworn to before me this 4th day of May. A. D. 1872.
DAVID F. FOX,
Special Examiner.

DEWITT C. HOLBROOK, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, residence, and occupation?

91 A. Dewitt C. Holbrook; residence, No. 6 Adams avenue, West Detroit; occupation, attorney and counsellor at law.

Q. 2. Are you city counsellor of the city of Detroit?

A. I am.

Q. 3. How long have you resided at No. 6 Adams avenue?

A. Eighteen years.

Q. 4. How many double houses are there on Adams avenue, between Woodward avenue and the next street west, which is Park street?

A. Two.

Q. 5. Since you have lived there, has there been more than those two?

A. There has not.

Q. 6. How many of those double houses have you owned at different times?

A. I have owned the whole of one and the west half of the other, which stands near the middle of the block, on lot 14.

Q. 7. Did you know William Davis in his lifetime?

A. Yes, sir.

Q. 8. Did he ever live in either of the houses you have owned?

A. No, sir. Not in the eighteen years that I have lived in that block.

Q. 9. Do you know, or did you know, Joseph L. Langley?

A. Yes, sir; I knew him very well.

Q. 10. Where did he reside in 1856 and 1857?

A. He resided in the east half of the double dwelling on lot 14.

Q. 11. Did William Davis reside there with him, or reside there at all, at that time?

A. I have no recollection of his ever residing in that block. I wish to add that I never knew Mr. Davis to speak to him till about two years before he died.

92 Q. 12. Do you know Mr. Alexander M. Campan, and if so, for how long?

A. Yes, sir; I have known him for 26 years.

Q. 13. What is his character and standing in this community?

(Objected to, his character not having been assailed.)

A. I think Mr. Campan is one of the most honorable and truthful men in the city of Detroit.

Cross-examination:

Q. 1. Did you ever know a man by the name of Spillane?

A. Yes, sir.

Q. 2. Did he not, in 1856 or 1857, own a part or the whole of one of those double houses of which you have spoken?

A. Mr. Spillane owned the east half of that house, which is next to my residence, and on lot 11.

Q. 3. Do you know who lived in that house in December, 1856?

A. No; I do not.

Q. 4. Do you know who lived in that house any time in 1857?

A. No; I can't place any person there.

Q. 5. Suppose Mr. Wm. Davis had lived, came into this city an entire stranger, in October or November, 1856, and lived in that house about two months, would you be likely to recollect it, if you ever knew it?

A. I think I should have remembered the man.

Q. 6. Are you willing to swear that Mr. Wm. Davis did not live in that house any time in 1856 or 1857?

A. No.

Q. 7. When did you purchase that property, and of whom?

93 A. I can't tell you the date; it is about ten years ago that I bought it of Mrs. Spellane.

D. C. HOLBROOK.

Subscribed and sworn to before me this 4th day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till May 9th, 1872, at 2 p. m.
Adjourned till May 18th, at 2 p. m.

DAVID C. DIBBLE, a witness produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. David C. Dibble; thirty-three years old; residence, Monroe, Michigan; occupation, a sailor generally; I fish sometimes.

Q. 2. Did you know, in his lifetime, Wm. Davis, and do you know his sons Samuel H. and David W.?

A. Yes, sir.

Q. 3. About when did you first know them?

A. I think about the last of November, or 1st of December, 1859.

Q. 4. Where were they then living?

A. On Cass street, near Michigan avenue, Detroit.

Q. 5. Were you at their house at that time; if so, how long did you stay?

A. I was; I think I staid about four or five days. Don't recollect the exact time.

Q. 6. Were you in the basement or cellar of that house while you were there?

A. Yes.

Q. 7. Was there any refrigerator, box, or apparatus there used for the purpose of freezing fish or anything of that kind?

(Objected to as leading.)

A. I didn't notice any.

94 Q. 8. Was there anything of that kind anywhere around the premises?

(Objected to as leading.)

A. I didn't notice any such thing.

Q. 9. Was there any servant employed then about the house at that time?

A. I think Mr. Davis's daughters did the work.

Q. 10. Where did you go after you left Mr. Davis that time?

A. I went to my home in Connecticut.

Q. 11. When did you next come back to Detroit?

A. In December, 1863.

Q. 12. Did you see Mr. Davis' family at that time, and if so, where?

A. I did, on Lafayette street west, near the corner of Third street.

Q. 13. How long did you stay that time?

A. I should judge three or four days.

Q. 14. Did you see anything there of any such refrigerator, box, or apparatus?

(Objected to as leading.)

A. I did not notice anything of the kind.

Q. 15. Did you see any fish there? And if so, state in what condition, and what was done with them, &c.

A. I did see fish there. They were fresh white-fish. They were being packed in barrels by David Davis. They were in what they called their barn or stable, I think. There were barrels in there. There was a team in the alley back of the stable. The wagon had more white-fish in it. The wagon-box was nearly full at the time, and Mr. Davis was packing from the wagon. They were fish, I suppose, that were taken from pens in the river.

Q. 16. What years, if any, have you fished in the vicinity of Monroe, Michigan, yourself?

A. I fished in the spring of 1864—the fall of 1864—the winter of 1864 and 1865—December, January, and February. The fall of 1865 and the spring of 1865. I fished over at Toledo for a man named

95 Riker, and the fall of 1866 and part of the fall of 1867, and the fall of 1869. The fall of 1868 I think I fished at Lake Superior for Mr. Davis and my father.

Q. 17. How long, and where, was your father in the fish business?

A. I think it was about 24 years in different places on the lakes and salt water, California and Oregon. His given name was Albert.

Q. 18. Where was he and what was his business in 1857 and 1858?

A. In 1857 he was fishing in the vicinity of Monroe, I think.

Q. 19. Was there a man by the name of Albert C. Chittenden engaged in the business with him at that time?

A. I think he was.

Q. 20. Your father is now dead, is he not?

A. Yes, sir.

Q. 21. Were you ever in the employ of William Davis; and, if so, when and where and what was the business?

A. I was employed two seasons by Dibble, Davis & Co. in fishing, and four winters by S. H. Davis & Co. in the skating rink, Woodward avenue, Detroit.

Q. 22. Who was Dibble, Davis & Co., and what seasons were you employed by them in fishing?

A. It was Albert Dibble, William Davis, Samuel H. Davis, and David W. Davis. I think that was all there was. I was employed by them in 1868 and 1869, spring, summer, and fall, fishing at Portage Entry, Lake Superior.

Q. 23. What seasons were you employed at the skating rink?

A. I think I commenced in December, 1867, and that winter, and the next three winters.

Q. 24. Do you know Samuel Barlin, a colored man?

A. Yes, sir.

Q. 25. When and where did you first know him?

96 A. At Mr. Davis' store, the first winter I worked in the rink.

Q. 26. Where was he employed then?

A. In the store, in the Russell House block.

Q. 27. When and where did you first hear of freezing by artificial process?

A. I think it was in the fall of 1865. We had been sending fish to Mr. Davis—father and I. My father came up here and staid over Sunday. We got to talking about keeping fish, when he came back from Detroit. He said Mr. Davis had a box with tubes in it, and filled those tubes with salt and ice. He told me that a coating of frost would come on the outside of those tubes, inside of the box. He told me that they could freeze fish or not, just as they chose, in it. I didn't think enough of it to ask him any more questions particularly about it.

Q. 29. When did you first see anything of this kind yourself?

A. The first winter I came to work in the rink. I think it was 1867.

Q. 30. When you fished in the winter you fished through the ice, did you not?

A. Yes, sir.

Q. 31. Was there any barn at the Cass-street house?

A. Not that I know of. There was a wood-shed back of the house.

DAVID C. DIBBLE.

Subscribed and sworn to before me this 4th day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till Wednesday, the 22d inst., at 2 p. m.
Adjourned till Saturday, the 25th inst., at 9 a. m.
Adjourned till May 30th, 1872, at 10 a. m.

97 AUGUST SCHULTE, recalled on the part of the complainant, deposes and says:

Q. 1. Do you desire to make any correction in your previous testimony; if so, will you please do it?

A. Yes, sir; I do. I said when I was here, in my last statement, that we got the deed in 1856. Instead of that it was a contract we got the 15th day of November, 1856, and the deed the 1st day of January, 1858, and the 15th of March, 1858, the deed was recorded.

Q. 2. Who controlled the premises after the contract was given?

A. Father; he collected the rents and rented the houses.

Q. 3. How many of your father's houses in Lafayette street were ever occupied by colored people, and how were those houses situated?

A. Two; one double house and one single house, on the same street, right opposite each other.

Cross-examination:

Q. 1. How many houses had your father to rent?

A. He had three since 1856, until his death.

Q. 2. Where was the third one?

A. The house where he lived in; he rented the front part of it; it was right next door.

AUGUST SCHULTE.

Subscribed and sworn to before me this 30th day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 2 p. m.

ELIZABETH SCHULTE, a witness produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, and residence?

98 A. Elizabeth Schulte; almost forty-two years old; residence, Detroit, on Lafayette street east, between Hastings and Revard streets.

Q. 2. How long have you lived there?

A. Well, I am sure I don't know; in 1852 we bought that place and moved in that house.

Q. 3. What was your father's name?

A. Francis Schulte; he is now dead.

Q. 4. Did your father ever own the house and lot next east of where you now live; and if so, when did he buy it?

A. In 1856, the 15th of September.

Q. 5. Do you know Mrs. Maria Barlin and Samuel Barlin, her son?

A. I do.

Q. 6. State whether or not Mrs. Barlin and her son ever occupied that house that you say your father bought in 1856.

A. No, sir, they did not; they did stay there; I didn't understand your words.

Q. 7. What year did Mrs. Barlin move into that house?

A. In 1860 or 1861.

Q. 8. Was there ever any white people living in that house after your father owned it?

A. Yes, sir.

Q. 9. When did the first colored people move into it after your father owned it?

A. I could not say.

Q. 10. I mean in what year did the first colored people move into that house?

A. 1858.

Q. 11. When Mrs. Barlin moved out of that house where did she go to?

A. Across the road.

Q. 12. Do you know when she left the house across the road?

A. 1867; it was in March or April.

Q. 13. How well do you know Mrs. Barlin?

A. I know her well.

Q. 14. Please state whether or not you have seen her after and talked with her?

99 A. Yes, sir.

Q. 15. Did you ever talk with her about when she came to Detroit?

(Objected to as immaterial and incompetent as hearsay.)

A. Yes, sir.

Q. 16. Give the talk.

(Same objection.)

A. She said often to me that we were the first family she came to when she came to Detroit.

Q. 17. What do you mean by the first family she came to when she came to Detroit?

A. I mean that my father was the first man she rented of in this city.

Q. 18. Did your father own the house that Mrs. Barlin moved into across the road?

A. Yes, sir.

Q. 19. Have you any way of knowing how long Mrs. Barlin lived in the two houses you have spoken of belonging to your father, (both together?)

A. She always said to me seven years.

(Answer objected to as mere hearsay and incompetent.)

Q. 20. What family did Mrs. Barlin have when she first moved into your father's house, and has she now?

A. She has one son and a girl—Sam and Adeline—she has the same now.

Q. 21. How far from your house does Mrs. Barlin now live?

A. She lives in the next block, on the same street, and same side.

Q. 22. Was there ever any colored people living in the house where your father lived and where you now live?

A. Before we owned it—there was one family we had in it the

100 first year we owned it—about a couple months; I cannot say how long. After that there was none.

Q. 23. When did your father buy the house and lot you live in now?

A. I think in 1852.

Cross-examination:

Q. 1. In what year were you born?

A. Well, I don't know. I am 42 almost; that is all I know.

Q. 2. Where were you born?

A. In Prussia.

Q. 3. What year did you come into this country?

A. I guess in 1847.

Q. 4. Why do you think it was in 1847?

A. Because I think it was so.

Q. 5. When did you first come to Detroit?

A. In 1848.
Q. 6. How long was this after you came from Prussia?
A. One year.
Q. 7. When did you first see Mrs. Barlin?
A. In 1860 or 1861.
Q. 8. How do you know it was in 1860 or 1861?
A. Because I always attended to my father's business.
Q. 9. Question repeated.
A. I know it was.
Q. 10. Is that all the reason you can give?
A. Yes, sir.
Q. 11. How do you know that it was in 1858 that colored people first lived in your father's house?
A. In 1858, the first of July, my oldest brother got married. At that time we did not have any in. After that we did.
Q. 12. What is the name of your oldest brother, and how old is he?
A. He is dead now. His name was Francis Schulte.
Q. 13. How many years since Mrs. Barlin moved away from your father's house?
A. She moved away in 1867.
101 Q. 14. How many years is that?
A. That would be a little over 5 years.
Q. 15. How do you know she moved away in 1867?
A. I know it.
Q. 16. Question repeated.
A. It was the year father was building a new house where she lived.

ELIZABETH SCHULTE.

Subscribed and sworn to before me this 30th day of May A. D. 1872.

DAVID F. FOX,
Special Examiner.

AMANDA NEEDHAM, (colored,) a witness produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, and where do you reside?
A. Amanda Needham; 365 Crogham street, Detroit.
Q. 2. Did you know Francis Schulte in his life-time?
A. Yes, sir.
Q. 3. Did you ever live in his house, on the south side of Lafayette street east, between Hastings and Rivard streets, and next east of the house where he lived himself, and if so, when?
A. Yes, sir; in 1859.
Q. 4. What part of 1859?
A. August.
Q. 5. How do you know you lived there at that time?
A. I have receipt to show for it.
Q. 6. Do you know Mrs. Maria Barlin and her son Samuel, and her daughter?
A. Yes, sir.
Q. 7. Did they live in that house at the time you lived there?
A. No, sir.
102 Q. 8. Do you know when it was she went into that house—how long after you left there it was?
A. No, sir.

her
AMANDA + NEEDHAM.
mark.

Subscribed and sworn to before me this 30th day of May, A. D. 1872.
DAVID F. FOX,
Special Examiner.

ANNA THOMAS, (colored,) a witness produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name and where do you reside?

A. Anna Thomas. I live in Larned street, Detroit; I was born the 9th day of January, 1822.

Q. 2. Did you know Francis Schulte in his life-time?

A. Yes, sir.

Q. 3. Did you ever live in his house on the south side of Lafayette street east, between Hastings and Rivard streets, and next to the house where he himself lived, and if so, when?

A. Yes, sir. I moved there in September, 1859. I moved away in October. Stayed there just one month.

Q. 4. Where did you go to when you moved from there—into whose house?

A. Mr. Sutherland's house.

Q. 5. Have you anything in your possession which shows when you were in Sutherland's house?

A. I have a receipt for house-rent.

Q. 6. Do you know Mrs. Maria Barlin, and her son and daughter?

A. Yes, sir.

Q. 7. Were they in Schulte's house when you lived there, in the fall of 1869?

A. They were not.

Q. 8. Did you ever live in Schulte's house again after you left Sutherland's house, and if so, when?

103 A. Yes, sir; I did live there again; when, I don't know exactly. I moved there in September, but what year, I don't know.

Q. 9. Have you in your possession any paper which will show when you moved there?

A. I have a receipt here which shows for house-rent.

Q. 10. Will you please read that receipt, so that the examiner can write it down?

A. Yes, sir. "Received of Mrs. Thomas three dollars for rent of house for the month ending the 27th day of October, 1862.

"FRANCIS SCHULTE."

Q. 11. How many years was it from the time you left Schulte's the first time till you went back this time?

A. Well, I am not able to say exactly. My best judgment is it was three years.

Q. 12. Was Mrs. Barlin in there when you went back, if you remember?

A. She was.

Q. 13. Do you know how long she had been there?

A. I do not.

Q. 14. State whether or not you ever knew her before you found her there?

A. No, sir; I never knew her.

Q. 15. What family did she have there at that time?

A. She had two children, a boy and girl. The boy's name was Sam, and the girl Adeline.

her
ANNA + THOMAS.
mark.

Subscribed and sworn to before me this 30th day of May, A. D. 1872.
DAVID F. FOX,
Special Examiner.

ROMULUS MORTON, (colored,) a witness produced and sworn on the part of the claimant, deposes and says:

Q. 1. What is your name, age, where do you live, and what do you do for a living?

104 A. Romulus Morton. I am about 54. I live in Macomb street, in Detroit. I don't know the number. I am a whitewasher and plasterer.

Q. Did you ever live in the house of Francis Schulte, on the south side of Lafayette street, in Detroit; if so, when?

A. Yes, sir; I lived there in 1859 and 1860.

Q. 3. How long did you live there?

A. I lived there from October until the following May.

Q. 4. State whether or not, during the time you lived there, a Mrs. Maria Barlin and her family lived there.

A. No, sir.

Q. 5. Is there anything which enables you to fix the time when you lived there, and if so, what is it?

A. Yes, sir. One of my children was born there, and I have got his age recorded in the Bible.

Q. 6. Will you read the entry in your Bible of the birth of this child?

A. Alpheus B. Morton was born December 28th, 1859.

Q. 7. Who lived in that house at the time you did?

A. Mrs. Needham lived in the front, and Mrs. Randall in the wing. There were three tenements.

Q. 8. Do you know whether Mrs. Randall moved out while you lived there?

A. Yes, sir, she did. She moved out in March, 1860.

ROMULUS MORTON.

Subscribed and sworn to before me this 30th day of May, A. D. 1872.
DAVID F. FOX,
Special Examiner.

MARY RANDALL, (colored,) a witness produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, and where do you reside?

105 A. Mary Randall. I can't tell my age. I live in Kentucky street, between Ohio and Antoine streets, in Detroit.

Q. 2. Did you ever live in Francis Schulte's house, on the south side of Lafayette street east, between Hastings and Rivard streets?

A. Yes, sir.

Q. 3. Who lived there when you did?

A. I moved in first and Mr. Morton next. I mean Romulus Morton.

Q. 4. How long first did you move in?

A. About a couple of weeks.
Q. 5. Who moved out first?
A. I moved out first.
Q. 6. Where did you go?
A. Out on Mr. Pallister's place.
Q. 7. Did you ever move back again into Mr. Schulte's house again; and, if so, when?
A. Yes, sir; about a year after. We raised one crop in the country.
Q. 8. Did you know Mrs. Maria Barlin and her family?
A. Yes, sir.
Q. 9. Where did they live when you first knew them?
A. In Mr. Schulte's house.
Q. 10. Was Mrs. Barlin in Mr. Schulte's house when you went back the second time, or did she come there afterwards?
A. No, sir; she moved in afterwards.

her
MARY + RANDALL.
mark.

Subscribed and sworn to before me this 30th day of May, A. D. 1872.
DAVID F. FOX,
Special Examiner.

Adjourned till 31st inst. at 10 a. m.

CHARLES D. SHIPPEY, a witness produced and sworn on the part of the complainant, deposes and says:

106 Q. 1. What is your name, age, residence, and occupation?
A. Charles D. Shippey; age, 49 years; residence, Cleveland, Ohio; occupation, carriage business.
Q. 2. Did you ever live in Detroit; and, if so, when did you leave here?
A. I did. I left here five years ago this month.
Q. 3. Did you ever keep a stable on the southeast corner of Lafayette and Shelby streets?
A. Yes, sir.
Q. 4. More than once?
A. Yes, sir; twice at that place.
Q. 5. When did you first go there?
A. Last of June, 1860. I was there a month before I paid my rent.
Q. 6. Who was your landlord then?
A. Parsons & Fisher—Philo Parsons. I don't know Fisher's given name.
Q. 7. Have you anything or is there anything that fixes the date in your mind?
A. Yes. I didn't buy my carriages till May 27, 1860, of Thomas Maybury, corner of Eighth and Lafayette streets. I know, because my mortgage I gave for the carriages is on file in the city clerk's office, and bears date May 28th, 1860. I didn't run my carriages till four weeks after that date. I didn't take my license out till August 7th, 1860.
Q. 8. Did a colored boy by the name of George W. Hector work for you there?
A. He did.
Q. 9. More than once?
A. Yes; twice.
Q. 10. When did he first work for you there?

A. He commenced work in the winter of 1860. He worked for me at that time till after the battle of Bull Run, in 1861.

Q. 11. Did he ever work for you anywhere else before that?

A. No; I never saw him before that.

107 Cross-examination:

Q. 1. Where did you live before you went to this place on the corner of Lafayette and Shelby streets?

A. I boarded at the City Hotel, in Lafayette street.

Q. 2. How long did you board at this hotel at that time?

A. About a year.

Q. 3. Where did you live immediately before that?

A. I boarded at the Tremont House. I was there about three months.

Q. 4. Where did you live before you boarded at the Tremont House, and how long?

A. I boarded with Edward Leadbeater, near the corner of Third and Howard streets. I was there about three months.

Q. 5. Where did you live, and for how long, before that?

A. I boarded with Daniel Mahany near three months, I think, near the corner of Second and Congress streets.

Q. 6. Where did you live, and how long, before that?

A. From the time I came from Cleveland, which was on the last boat in the fall of 1858, I boarded with Widow Wilds, it was at that time, now Mrs. Jennings, on Cass street.

Q. 7. What was your business before you went into the place on the corner of Lafayette and Shelby streets?

A. I drove carriage in the streets for Mr. Leadbeater. I was secret watchman at the Central depot at one time.

CHARLES D. SHEPPEY.

Subscribed and sworn to before me this 31st day of May, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 2 p. m.

108 MARTHA J. BLAKE, (colored,) a witness produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age and residence?

A. Martha J. Blake; age, 49 years; residence, Detroit.

Q. 2. Did you ever live in Francis Schulte's house, on the south side of Lafayette street east, between Hastings and Rivard streets?

A. Yes.

Q. 3. Will you produce the receipt for your first month's rent there?

A. Yes. "Received of Mr. Blake, three $\frac{12}{100}$ dollars, for rent of house, for the month ending May 5th, 1864. (Signed) Francis Schulte. T. J. S."

Q. 4. Did you occupy the whole of that house, or only a part, at this time?

A. Only a part.

Q. 5. Did Mrs. Barlin live there at that time—Mrs. Maria Barlin, and her son Samuel and her daughter Ada?

A. They moved out about three days before I went in. They moved across the street, and I moved in the same part she had occupied.

her
MARTHA J. + BLAKE.
mark.

Subscribed and sworn to before me this 31st day of May, A. D. 1872.
DAVID F. FOX,
Special Examiner.

Adjourned till June 1st, A. D. 1872, at 10 a m.

PHILO PARSONS, a witness produced and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Philo Parsons; age, 55 years; residence, Detroit; occupation, a banker.

Q. 2. Were you one of the firm of Parsons & Fisher, bankers? If so, give the full names of the parties.

109 A. I was; Philo Parsons and Galem M. Fisher. That partnership is now dissolved, and Mr. Fisher is in California.

Q. 3. Did the firm of Parsons & Fisher ever own lot 12, military reserve, southeast corner of Lafayette and Shelby streets, Detroit; and if so, when and from whom did they purchase?

A. They owned it, and purchased in July, '60. Deed was dated July 27th, 1860; purchased a little before that. We purchased from David Thompson, who is now dead.

Q. 4. Did you know Charles D. Shippey?

A. Yes, sir.

Q. 5. Did he ever occupy that; and if so, when?

A. He occupied a part of those premises—the barn—as a stable for his horses.

Q. 6. When did he go in?

A. He was the first tenant of Parsons & Fisher, and went in very soon after we purchased, according to the best of my memory.

Cross-examination:

Q. 1. Was the barn on the premises when you bought them?

A. It was.

Q. 2. How long had it been there?

A. It was an old wretched thing, and had been there 30 years, as I should judge from its appearance.

P. PARSONS.

Subscribed and sworn to before me this 1st day of June, A. D. 1872.
DAVID F. FOX,
Special Examiner.

Adjourned till Tuesday, June 4th, at 10 a. m.
Adjourned till Wednesday, June 5th.

JOHN BOYD, a witness produced and sworn on the part of the complainant, deposes and says:

110 Q. 1. What is your name, age, residence, and occupation?

A. John Boyd; 66 years old; residence, at the present time, Adair county, Iowa; occupation, a farmer.

Q. 2. Did you ever live in Columbus, Ohio, or near there, and did you work for William Davis there?

A. Yes, sir.

Q. 3. Will you state when you went to work there for William Davis?

A. I went to work for him in the month of August, 1850.

Q. 4. How long did you continue to work for him?

A. I worked for him two years and four months, about—no, two years and about one month.

Q. 5. Where did Mr. Davis live at the time you went to work for him, and what was his business?

A. He lived in the suburbs of Columbus, Ohio, on a farm adjoining the town. His business was keeping a dairy there. He kept cows.

Q. 6. Was he using at this time more than one farm?

A. Yes, sir. He was using two farms. He had that farm that he was living on, near town, rented, and he bought another called Northwood, three miles from town, and he sent me to Northwood when I first went to work for him. I never worked a day on the farm near the town.

Q. 7. What was your business while you were working for Mr. Davis?

A. I was at a good many kinds of business during the day. I was milking cows, and I was sometimes setting up pins in a ten-pin alley he had there, and sometimes I was turning a revolving swing they had there. Sometimes I did a little farming, too, the first year. The second summer I was about the house mostly. I made ice-cream sometimes for the ladies and gentlemen who came there. Sometimes I
111 chopped a little wood, and sometimes I helped the gardener a little. Sometimes I would be gathering tomatoes for market.

Q. 8. Where did they keep their milk at Northwood?

A. When they had any milk that they didn't sell, they kept it in the cellar. They sold most all of it; if there was any left it was kept in the cellar. It was in a large box. The box had been there, I suppose, when he had bought the farm.

Q. 9. What kind of a box was this?

A. It was made of boards—common boards. The lid of the box was raised by a pulley and weight, so that it would remain up when raised. The box was made of two thicknesses of boards. They told me there was charcoal between the boards to keep the milk cool.

Q. 10. Was the box lined with tin, or zinc, or anything of that kind?

A. No, sir; there was nothing of the kind about it. There was just the boards.

Q. 11. Did they use ice and salt in that box?

A. There was a partition at one end in which we could put in a bushel or a bushel or two of ice. There was no salt used. I put pieces of ice around the pans, and maybe put a piece of ice in the pans, to keep the milk cool.

Q. 12. Was there any other box than this in the cellar or any part of the house, or anywhere on the premises—that is, any box that could be used for any such purpose as preserving or freezing any articles?

A. No, sir. There was no other box about that place.

Q. 13. Did Mr. Davis have any other business at that time, except the dairy business and the farming business?

A. No, sir.

Q. 14. Did he ever deal in fish there?

A. I never seen a fish or heard a fish named while I was around the premises.

112 Q. 15. Did you leave there before Mr. Davis gave up that farm, or afterwards?

A. I staid with the man who bought the farm till near Christmas, after Davis left with Sam Medary.

Q. 16. Did they take that box away with them, or not?

A. No, sir. They couldn't do it without taking down the house or taking the box to pieces.

Q. 17. How often were you down to the farm near Columbus?

A. I couldn't have been there over about twice.

Q. 18. Do you know whether or not they had any boarders there?

A. They had no boarders there. They had some boys to work there milking cows.

Q. 19. Did they have any boarders at Northwood?

A. No steady boarders there. They came and went. They came sometimes before and after dinner, and would return before sunset.

Q. 20. Did you ever know a man by the name of W. W. Riley boarding at either place?

A. No, sir. There was no such man in my time.

Q. 21. How long after you went to work for Davis did his family move to Northwood to live?

A. I went some time in August, and he came up in October.

Cross-examination:

Q. 1. Where were you born?

A. I was born in Ireland.

Q. 2. When did you come to this country?

A. I came in 1846.

Q. 3. Where did you live first after coming?

A. I lived in Kingston, Canada.

Q. 4. When did you first go to Columbus?

A. I went to Columbus the summer of 1850.

Q. 5. Were you married then?

A. No, sir.

Q. 6. Did the partition in the box you have described have a separate lid to it?

A. Yes, sir.

113 Q. 7. Did you sometimes put the ice in there?

A. Yes, sir. Whenever we took any ice out of the ice-house we put it in that box, in that place partitioned off from the box.

Q. 8. Was there any communication between the place partitioned off and the main part of the box?

A. No, sir. There were just boards put up to keep the ice in its place.

Q. 9. Was there not a box in the bar-room in the south corner?

A. No, sir. There was no box in no corner—north, east, south, and west.

Q. 10. Did they not have frequent visitors at Northwood, and keep a kind of pleasure-house?

A. Yes, sir. They had frequent visitors.

Q. 11. Did you have anything to do with the cooking there?

A. No, sir.

Q. 12. Do you know but what they had fish for their visitors every day?

A. No, sir. They had no fish every day. I never saw any fish on the table at all.

Q. 13. Did you set the tables?

A. No, sir.

Q. 14. Did you sit down to the table with the visitors?

A. All the time, unless there was a large party of ladies.

Q. 15. What did you freeze the ice-cream in?

A. I froze it in a can made for the purpose.

Q. 16. Who besides you froze it?

A. I declare I couldn't tell whether Mr. Davis made it sometimes or whether his boys made it sometimes.

Q. 17. Do you remember a man from Columbus, who worked for Mr. Davis as a confectioner a part of the time each week, named Neereamer?

A. There was a man out about twice. I don't know his name. I mean twice altogether. He was acting as a confectioner for Mr. Davis. Mr. Davis thought it was too expensive to keep him.

114 Q. 18. How many ice-cream freezers did you see around at Northwood?

A. He had two.

Q. 19. Didn't he have more than two?

A. No, sir.

Q. 20. Where were these kept?

A. I worked with them down in the cellar, where it was cool beside the ice and the cream.

Q. 21. Were they kept in the same apartment as the box you have described?

A. Yes, sir.

Q. 22. What part of the cellar was this box in?

A. The box was within two or three feet of the outside door of the basement. I generally went down from the outside.

Q. 23. Was the cellar divided into different apartments?

A. Yes, sir. There were brick walls through it.

Q. 24. Did you go into the apartments, other than that where the box stood, often?

A. Yes, sir.

Q. 25. What for?

A. I used to go through one apartment to go up stairs into the kitchen, and there were two or three apartments I could see into on the road up.

Q. 26. When did you leave Columbus?

A. I believe the winter of 1852 and 1853. I went from there to Mount Vernon.

Q. 27. When did you move to Iowa?

A. I moved in 1857.

Q. 28. Did you ever see Mr. Davis, or anybody that lived at Northwood, after the time you left Columbus?

A. No, sir.

Q. 29. When did you first recall what happened at Northwood, and what made you do so?

A. On Sunday last, when I came from meeting and found a man there after me.

Q. 30. What is this man's name?

A. I don't remember his first name; he called himself Mr. Grant, I believe.

115 Q. 31. What did he agree to pay you for coming here?

A. He told me that the party would be liberal, and would pay me for my trip. He wanted me to come without making any bargain. I told him if he would give me $50 and pay my passage I would come, and he handed out the cash before a lawyer there.

Q. 32. Did you see any one about this matter before coming to Detroit, save this Mr. Grant?

A. No, sir.

Q. 33. What did he tell you he wanted to have you swear to here?

A. He told me to testify concerning Mr. Davis' affairs—what I knew about them.

Q. 34. Did you not tell him what you knew about them before he paid you?

A. I told him I didn't know anything about the matter at all, and

there was no use in him taking me such a trip, as I didn't know any thing about that business.

Q. 35. What business did you mean that you said you didn't know anything about?

A. What you two gentlemen so particularly inquired of me about—the fish business. I told him I didn't know anything about it, and I don't know anything about it yet.

Q. 36. Is that all you told him?

A. That is all I told him.

Redirect:

Q. 1. Mr. Grant inquired of you whether you had ever worked for Davis, near Columbus, and when, &c., before he asked you to come to Detroit; did he not?

A. Yes, sir.

Q. 2. Did or did he not inquire of you about the fish business you have spoken of before he asked you to come to Detroit?

A. Yes, sir; he did. I told him there were no fish there in my time.

116 Q. 3. When was it that he paid you $50 in the presence of the lawyer?

A. It was in Fontenelle, the county-seat of Adair County, Iowa.

Q. 4. How far from the place where you live?

A. Twelve miles.

Q. 5. Why did you go the lawyer?

A. I was acquainted with him, and went to him and told the story.

Q. 6. What did he tell you?

A. He told me that I might go or I might not, as I pleased.

Q. 7. And what did you do then?

A. I just told Mr. Grant that I would go with him if he would pay me fifty dollars besides expenses.

JOHN BOYD.

Subscribed and sworn to before me this 5th day of June, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till July 3d, 1872.

The counsel for complainant puts in evidence the master's report in case of Enoch Piper vs. James Brown et al., to the admission of which counsel for defendant consents, with the objections on the ground of incompetency and immaterial'l'y however. Said record is marked Complainant's Exhibit 3.

DAVID F. FOX,
Special Examiner.

STEPHEN S. JOHNSON, (colored,) a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Stephen S. Johnson; aged 53 years; residence, Detroit; occupation, janitor for Merrill block. My residence is 136 Lafayette street east.

Q. 2. Are you the husband of the witness sworn in this case, Martha J. Johnson?

117 A. I am.

Q. 3. Do you know Mrs. Maria Barlin, and her son Samuel Barlin, and her daughter Ada?

A. I do.

Q. 4. State where you first saw Mrs. Maria Barlin.

A. I first saw her on the dock where the Cleveland boats land, in the city of Detroit.

Q. 5. Did you have any conversation with her at that time?

A. Yes, sir; I did.

Q. 6. State the circumstances of that interview.

(Objected to as calling for incompetent evidence.)

(Question withdrawn.)

Q. 7. How long, if you know, had she been in the city at that time?

A. She told me she had just come.

(Answer objected to as incompetent, because hearsay, by counsel for defendants, and asks that it be stricken out.)

A. Her things were on the boat, and she wanted to get a house to live in, and asked me if I knew of any house. I told her there was a house on Lafayette street, right across the street from where I live—Mr. Francis Schulte's house, on the east side of Lafayette street, between Hastings and Rivard streets.

(Remainder of this answer objected to for reasons given above.)

Q. 8. Do you know whether or not Mrs. Barlin moved in this house and lived there?

A. She did. She moved in there right away, within a day or so, I am certain, and lived there several years.

Cross-examination:

Q. 1. Have you been in Detroit all this spring?

118 A. I have. I have been here 30 or 40 years.

Q. 2. When did you first call to mind the fact of your seeing Mrs. Barlin on the dock, as you have testified?

A. I couldn't tell exactly when I first called it to mind. My wife, and Mrs. Barlin, and myself have talked it over frequently in our house, she speaking of my kindness to her at that time.

Q. 3. Did you know when your wife testified as a witness in this case?

A. No, sir; I didn't. I knew she was here.

Q. 4. Did you know that she was going to testify before she testified?

A. No, sir.

Q. 5. Do you live with your wife?

A. Yes, sir.

Q. 6. Didn't she tell you that she had been summoned as a witness before she testified?

A. No, sir; she did not.

Q. 7. Did she tell you, after she had testified, that she had been testifying?

A. She told me that she had been here as a witness.

Q. 8. When did you first talk with Mr. Prentis about this case?

A. I couldn't tell when that was. It was before my wife gave in her testimony.

Q. 9. Did you tell him then what you have now testified to?

A. No, sir, I didn't; part I might, but not all.

Q. 10. When did you tell him first of this conversation which you now say you had with Mrs. Barlin on the dock?

A. It was in the evening, the first time I ever saw him. I think that was the first I ever spoke to him about it. I certainly had never seen him before.

Q. 11. You told him then about this conversation with Mrs. Barlin on the dock, did you not?

A. Yes, sir.

119 Q. 12. What year was it when you had the conversation you have spoken of with Mrs. Barlin on the dock?

A. I don't remember what year.

Q. 13. About what year?

A. It must have been in 1867 or '8. Somewhere long about that time.

Q. 14. Do you mean 1867 or '8, or 1857 or '8?

A. I mean just this—I made a mistake. It was a year or after the war. That was in 1860, wasn't it?

Q. 15. Are you certain that it was not three or four years after the war began?

A. I don't think it was as much as that.

Q. 16. Are you certain that it was not three or four years before the war commenced?

A. Yes, sir; I think I am.

Q. 17. Are you certain that is was after the war began?

A. I am pretty certain it was after the war began.

Q. 18. How long was it after the war began?

A. I couldn't tell you that any nearer than I have told you—that I thought the war had been began two or three years before I had the conversation on the dock with Mrs. Barlin.

Q. 19. Did Mrs. Barlin continue to live at the place you have mentioned all the time for several years thereafter?

A. Yes, sir.

Q. 20. Have you lived near her all the time?

A. There was one spell I didn't live near her, perhaps for six or nine months—perhaps a year.

Q. 21. When was this—what year?

A. I didn't take account of the year. Can't tell what year. Perhaps four or five years ago.

Redirect:

Q. 1. Do you know where Mrs. Barlin moved to when she left the house south side of Lafayette street, between Hastings and Rivard, to which you directed her?

A. Right across the street, on the same side I lived on. The house belonged to Schulte also.

120 Q. 2. How did it happen that you didn't know that your wife was going to be a witness in this case? State the circumstances.

A. I wasn't at home.

Q. 3. She was brought here by an officer, was she not?

(Objected to as leading.)

A. I couldn't say. She was brought here by some person. I don't know who it was.

Recross-examination:

Q. 1. Both you and your wife are colored, are you not?

A. Yes.

his
STEPHEN + JOHNSON.
mark.

Subscribed and sworn to before me this 3d day of July, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 5th instant.

JOHN W. BARNUM, a witness called and sworn on the part of the complainant, deposes and says:

(There being some doubt as to whether the time for taking the testimony has not expired, the counsel for defendants objects to the taking of any more testimony, but, for the purpose of saving time—if he is wrong in supposing the time to have expired—appears on behalf of defendants, without waiving his objections.

Counsel for complainant states that on the 2d of July a telegram was received from Mr. Barnum, stating his inability to be present in
121 Detroit before the afternoon of the 4th, which information was given to counsel for respondents, and it was proposed to him to take the deposition on the evening of the 4th, to which the counsel at first agreed, but afterwards suggested that the deposition should be taken on the 5th, which was agreed to; and on request of counsel for respondents, counsel for complainants further states that he told counsel for respondents that, although he had lost the agreement limiting the time for taking testimony, and being unable to say whether the 5th was included or not, had telegraphed to New York for information, to which no reply was received; yet, to the best of his recollection, the 5th was included.

Counsel for defendants says that the agreement to take the testimony on the 5th was made on the supposition that this day was a part of the time included in the order of the court, and the objection now made is at the request of the client, because he supposes the time has expired.

Counsel for complainant states that the client referred to is D. W. Davis, who was present when the agreement was made and made no objections to it.)

Q. 1. What is your name, age, residence, and occupation?

A. John W. Barnum; aged 58 years; residence, the city of Milwaukee, county of Milwaukee, State of Wisconsin; occupation, general commission merchant.

Q. 2. Did you ever reside in the city of Detroit, Michigan? If so, when and for how long?

A. I did. I came here on the 10th day of May, 1853. I left here on or about the twentieth of November, 1867.

Q. 3. From 1855 to 1868 what was your business, and where was your place of business?

A. My business was commission and transportation. My place
122 was at the foot of First street at first, that is 1855, and in 1856 I was between First and Second streets, Walter Chester's warehouse, and the fall and winter of 1856 and 1857 I went to the corner of Second street, on the dock, (foot of Second street.) I staid there then on this dock seven or eight years.

Q. 4. What did you deal in?

A. I dealt in flour, pork, provisions, and fish heavily.

Q. 5. Did any one else occupy any portion of the dock at the foot of Second street during any of the time you occupied it?

A. They did; George C. Jones and C. A. Sheldon. That, I think, is all.

Q. 6. State when Jones commenced, and when Sheldon commenced—the years—if you can.

A. Jones commenced in 1857. Jones was there four years, and then, soon after Jones left, Sheldon came. I think Mr. Hitchcock occupied the upper portion of the main warehouse, at one time, to store threshing-machines.

Q. 7. Did you know W'm Davis in his life-time, the father of Samuel H. and David W. Davis?

A. I did.

Q. 8. Did you ever have any business transaction with him? If so, state the same fully and particularly.

(Question objected to as irrelevant and incompetent.)

A. I had business transactions with him in shipping stuff to Cincinnati. That is about all I have got to say.

Q. 9. What did that consist of?

A. Potatoes and apples.

Q. 10. Did you ever have any other business transactions or connection with him?

A. Not to my recollection.

Q. 11. How long did this shipping business continue?

A. Two to three weeks.

123 Q. 12. State whether or not Mr. Davis rented of you or occupied any portion of either of the docks that you occupied during any of these years.

A. He never did.

Q. 13. Will you please state the arrangement between you and Mr. Davis with regard to the shipping of this produce you have spoken of?

A. The arrangement made with Mr. Davis, he was to deliver the stuff to me on my dock. I was to advance a certain amount on it, which was to be paid by drafts on the consignees in Cincinnati—D. Harper & Son, I think—who had agreed to accept the drafts. I know it was Harper.

Q. 14. From which dock was this business done?

A. Foot of Second street.

Q. 15. State whether or not Mr. Davis ever froze any fish in any of your warehouses, or any part of either of your docks, or on any of your premises, or had any box or apparatus for such purpose.

A. There never was any fish frozen on my dock or about my premises, during the time I occupied them, by Mr. Davis or any other person. Nor were there any boxes used for packing fish there. There was no apparatus for freezing fish, and I never saw a frozen fish there except in the winter-time, frozen naturally by the weather.

Q. 16. State what your means of knowledge in regard to frozen fish, or an apparatus for such purpose, being upon your premises, were?

A. I always carried the key to my warehouse myself, unlocked, opened it, and shut it. There could nothing of that kind have taken place without my knowledge; could not have been carried without my knowledge.

Q. 17. Did you know Davis all the time, from the time of the shipment of the produce spoken of by you until you left the city?

A. I did.

Q. 18. And I understand you to say you dealt largely in fish?

A. I did.

124 Q. 19. Will you state when, if ever, you first knew of Mr. Davis having any apparatus for the purpose of artificially freezing fish or other substances?

A. The first knowledge I ever had of Mr. Davis freezing fish or other substances, I went into Mr. Davis' place, in the Russell House block, and saw it there. I can't give the date. It was after 1860.

Q. 20. Please state whether or not you sent a telegram, on the 2d of July, that you were unable to attend here as a witness before the afternoon of the 4th.

A. I did.

Cross-examination:

Q. 1. Did not Mr. W'm Davis store barrels and pack his stuff in your warehouse?

A. He did not.

Q. 2. Did you not tell D. W. Davis this morning that he did?

(Objected to.)

A. I did not.

Q. 3. What did you tell him about this?

A. I told him he might have drove up a load there and rolled the barrels through the warehouse.

Q. 4. Did the produce he shipped come there in barrels?

A. I should say barrels; there might have been some bags.

Q. 5. Where did Mr. Davis do business after he left your dock?

(Objected to as immaterial and not cross-examination.)

A. He did business in one of the lower stories of the Michigan Exchange, on Atwater street.

Q. 6. Do you remember any other place?

(Objection continued.)

A. I do not; that is, I can't designate any other.

125 Q. 7. Was there ever, during the year 1856 or 1857, a refrigerator of any kind on your dock?

A. Not to my knowledge; there might have been some shipped over the dock; there was none in use on my dock.

Q. 8. How long before you left Detroit did you see Mr. Davis' box for freezing fish in his place of business under the Russell House?

A. From three to five years.

Q. 9. Did Mr. Davis explain to you the operation of that freezing-box at that time?

A. He did not; he was not in the store at the time.

Q. 10. Did he ever explain it to you?

A. He did, or partially.

Q. 11. Did he tell you when he first invented the box?

A. Never.

Q. 12. Did he tell you how long he had used it, or anything about his previous use of it?

A. He never did. He said he had experimented, but he did not tell me how long; he never gave me any dates.

Q. 13. You did a very large business over your dock in 1856 and 1857, did you not?

A. I did; that is, in fish.

Q. Did you deal at all in fresh fish?

A. I did not.

Q. 15. What kind of fish did you deal in at this time?

A. White-fish, trout, pickerel, herring—all salted fish.

Q. 16. When did you first know that Mr. Davis was a dealer in fish?

(Objected to as irrelevant, immaterial, and not cross-examination.)

126 A. I can't fix the date when I first knew it. My impression would be from 1860 to 1862.

J. W. BARNUM.

Subscribed and sworn to before me this 5th day of July, A. D. 1872.

DAVID F. FOX,
Special Examiner.

Adjourned till 3 p. m.

JEREMIAH CALNON, a witness called and sworn on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Jeremiah Calnon; aged 42 years; residence, Detroit; am in the grocery business.

Q. 2. Are you the owner of the building on the south side of Michigan Grand avenue, city of Detroit, now occupied by Mr. Fishback, as a grocery and saloon?

A. Yes, sir.

Q. 3. How long have you owned that building?

A. Since 1857.

Q. 4. Who built it—if you know?

A. I built it. I paid for building it.

Q. 5. Who was your first tenant in that building?

A. I think a man named Daily.

Q. 6. Did John Morse—any man by the name of John Morse—occupy that building?

A. I have no recollection of any man by the name of John Morse occupying that building.

Q. 7. Did any man by the name of Morse occupy that building; and, if so, what was his first name?

A. Yes, sir. His initials were T. G. My recollection is T. stood for Thomas.

Q. 8. When did he occupy it?

A. He paid rent for it in 1857.

Q. 9. When was the last rent paid?

A. The last I have a record of he paid me rent for October and November, 1857. I have no recollection of anything later.

127 Q. 10. Did this Morse go in there as a tenant, or did he go in there under the Daily lease, of which you have spoken?

A. I couldn't answer that question positively. My inference is he went in under the Daily lease.

Cross-examination:

Q. 1. Do you know what T. G. Morse's father's name was?

A. I do not.

Q. 2. Did you know Wm. R. Hines about that time?

A. I knew a person called Billy Hines.

Q. 3. Was he doing business in the store you have spoken of?

A. Not to my knowledge.

Q. 4. Was he not, to your knowledge, engaged at work in that store?

A. I have no recollection of it.

Q. 5. What was Hines doing at that time?

A. I couldn't state.

Q. 6. Was T. G. Morse himself engaged in business in that store?

A. I can't say whether he was engaged in business alone. He was in business there. He was at one time in partnership with Daily in that store.

Q. 7. Can you tell when Morse left that store?

A. I have no recollection, after he paid me the rent, whether he was there or not. I couldn't state whether he remained there longer or not.

Redirect:

Q. 1. What is this record to which you have referred as showing the payment of rents for October and November, 1857?

A. It is a journal or entry of rents received.

Q. How old a man was this Morse who occupied your store at the time?
A. He was quite gray. I think over 50 years old.
Q. 3. Did ever any other man by the name of Morse occupy that store?
A. I think not.
128 Q. 4. How near to this store is your place of business?
A. Less than 100 feet.
Q. 5. Does your book, to which you have referred, show any other Morse to have occupied that store?
(Objected to, because the book is the best evidence, and should be put in evidence itself.)
Counsel for complainant here asks the witness whether he is willing to allow this book to be put in to the case as an exhibit, to which the witness replies, No. Whereupon counsel for the complainant offers the book for inspection of counsel for respondent, and cross-examination thereupon, if desired.
A. I think not. (Answer to question 5.)
Q. 6. State why you are unwilling to allow the book to go in as an exhibit.
A. It is a part of the history of my business in this department—my rent business.
Q. 7. What does this man you have spoken of as Billy Hines do at this time?
A. I don't know.

Recross-examination:

Q. 1. In whose writing are the entries in this book?
A. In mine.
Q. 2. Are they all yours?
A. It may or may not be; there may be an entry occasionally in somebody else's handwriting.
Q. 3. Did you keep any other books at that time?
A. Not for rents.
Q. 4. Did you put in this book an account of all rents you received at hat time?
A. Yes, sir.

J. CALNON.

Subscribed and sworn to before me this 5th day of July, 1872.
DAVID F. FOX,
Special Examiner.

129 I, David F. Fox, special examiner, duly appointed by the circuit court of the United States for the southern district of New York, a copy of whose order, issued on the 16th day of April, 1872, is hereto annexed, to take testimony on the part of the complainant, do hereby certify that, on the several days named in the depositions hereto annexed, I was attended at my office, No. 101 Griswold street, in the city of Detroit, county of Wayne, and State of Michigan, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined, and the depositions were reduced to writing and read to the witnesses and by them subscribed in my presence, and the exhibits Nos. 1, 2, and 3 were introduced in evidence in said cause during the taking of said depositions.
Dated Detroit, July 6th, 1872.

DAVID F. FOX,
Special Examiner.

(The exhibits above referred to are as follows:

Complainant's Exhibit No. 1.—Letters-patent granted to William Davis, dated June 16, 1868, No. 78,932, for "improvement in preserving meats," &c.

Complainant's Exhibit No. 2.—Map of the city of Detroit, compiled by Eugene Robinson, city surveyor, dated 1871.

Complainant's Exhibit No. 3.—Certified printed copy of master's report in the suit of Enoch Piper vs. James Brown et al., in the circuit court of the United States for the district of Massachusetts.)

130 United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

On motion of M. B. Andrus, complainant's solicitor, and on reading and filing consent of defendants' solicitor, it is hereby ordered, that David F. Fox, esq., counsellor at law, at Detroit, Michigan, and James A. Wilcox, counsellor at law, of Columbus, Ohio, be, and they hereby are, respectively, appointed special examiners on the part of the complainant in this suit, to take testimony therein.

Dated New York, April 16, 1872.

Attest:

[L. S.] KENNETH G. WHITE, *Clerk.*

Depositions taken before James A. Wilcox, special examiner, at Columbus, Ohio, under the above consent and order.

131 U. S. circuit court, southern district of New York.

ENOCH PIPER
vs.
GEORGE T. MOON ET ALS.

Deposition of witnesses, taken to be used in an action pending in the United States circuit court for the southern district of New York, in equity, wherein Enoch Piper is complainant and George T. Moon is defendant, in pursuance of the order therefor hereto attached, and at the time and place therein stated, before the undersigned, special commissioner, appointed for that purpose by said order and by consent of the parties.

The said complainant appeared by George H. Prentis, his attorney, and the defendants by Charles A. Kent, their attorney, and thereupon the said complainant produced the following witnesses, to wit:

CHARLES A. WAGNER, of lawful age, who, being first duly sworn according to law, deposeth and says, to the interrogatories propounded as follows, to wit:

Q. 1. What is your age, residence, and occupation?

A. My age is 47; residence, Columbus; occupation, restaurant-keeper.

Q. 2. How long have you lived in Columbus?

A. Since 1846.

Q. 3. What has been your business since you have been in Columbus?

A. I have been connected with restaurants, at hotels, fish, game, and general shipping and produce business.

Q. 4. What was your business in 1852?

132 A. I was keeping the restaurant at the Neil House.

Q. 5. Did you ever know William Davis; if so, when?

A. I think I got acquainted with him in 1851 or 1852—1852, my impression is, while I was at the Neil House.

Q. 6. Did you know him from that time as long as he continued to live at Columbus?

A. I guess I knew him pretty much from 1852 until he left, but I don't remember the year he left.

Q. 7. Do you remember when he was engaged in the fish business in Columbus?

A. Yes, sir, but I can't give the year.

Q. 8. Were you engaged in the fish business at the same time?

A. Yes, sir; I attended market with fish during the same time he did.

Q. 9. Did you ever know or hear of Davis having any artificially-frozen fish in Columbus?

(Objected to as leading.)

A. No, sir; I never knew anything about frozen fish until about six years ago.

Q. 10. Could Davis have had fish thus frozen in warm weather, in the market in Columbus, and sold them, without your knowing it?

(Objected to as leading.)

A. I don't know how to answer this question. He might have had them there in boxes without my knowledge; I never saw them.

Q. 11. How many fish-dealers were there in the market at that time?

A. Part of the time there were four; in the spring and fall there were a good many others.

Q. 12. Who were the regular dealers?

A. Davis, myself, and A. Wagner, Louis Washington, now at

133 Cleveland, and part of the time of David Joyce, whose wife now attends the market; he is dead. A. Wagner is also dead. Our fish-stands were all close together, on the north end of the market.

Q. 13. Could Davis have sold frozen fish from his stand without your knowledge?

(Objected to as leading.)

A. That question seems to me about the same as the other. If he had frozen fish on his stand I would probably have seen them, if I was in market; but I don't think he would expose them on the stand in the summer-time.

No cross-examination.

C. A. WAGNER.

Also JAMES FARR, of lawful age, who, being first duly sworn according to law, deposes and says, to the interrogatories propounded, as follows, to wit:

Q. 1. What is your age, residence, and business?

A. I am 65; residence, Columbus, Ohio; business, saloon-keeper.

Q. 2. Did you ever know William Davis; if so, when and where?

A. I knew William Davis at the Northwood farm, from June, 1852, up to September 1st, 1852; this was just out of Columbus; September, 1852, he moved to Columbus.

Q. 3. Did you know him after he came to Columbus?

A. Yes, I knew him from that time until he moved to Sandusky.

Q. 4. Did you ever work for him; if so, when and where?

A. I commenced to work for Mr. Davis about the middle of June, 1852, at Northwood, and worked there for him until he moved to Columbus on

the 1st of September thereafter, and then worked for him at the
134 hotel in Columbus from the 1st of September until April 1, 1853; then worked for him from that time until October 22, 1853, bottling ale.

Q. 5. State whether or not Mr. Davis had at Northwood any box or apparatus for artificially freezing meats or other animal substances?

(Objected to as leading.)

A. I did not see anything except an ice-box, used for keeping the milk in, and an ice-cream freezer. I did not see anything used for freezing meats or artificial substances.

Q. 6. State whether or not you ever saw at Northwood any box or anything except an ice-cream freezer used for the purpose of freezing anything?

(Objected to as leading.)

A. No, sir.

Q. 7. State whether or not you ever saw there any frozen meats, or fish, or chickens, except when the weather was cold enough to freeze them?

(Objected to as leading.)

A. No, I did not.

Q. 8. Where did the ice-box of which you have spoken stand?

A. It stood at the first entrance of the cellar—the first cellar.

Q. 9. Was there any other ice-box, or other box in which meat or anything of the kind was kept, in that cellar, or either of the other cellars?

(Objected to as leading.)

A. Only the one large box.

Q. 10. Do you mean the large box you have before spoken of?

(Objection continued.)

A. Yes.

Q. 11. How many apartments were there in that box?

135 A. Only one.

Q. 12. Where was the ice kept in that box?

A. At the bottom of the same compartment with the other things.

Q. 13. Who, if any one, was working for Mr. Davis when you went to work there?

A. Joseph Finger was the only one I remember of at this time when I commenced.

Q. 14. Do you know how long he had worked there when you commenced?

A. I do not.

Q. 15. Give the size of this ice-box, as near as you can?

A. As near as I can recollect, it was about eight feet long, about four feet wide, and about three feet and six inches high.

Q. 16. State whether or not it was made different from an ordinary ice-box?

A. No, it was not.

Q. 17. State what Mr. Davis' business was at this time and what he kept in said box?

A. He kept a dairy. He kept chiefly milk in the box.

Q. 18. When did you first hear of frozen fish in Columbus?

A. Never heard of any frozen fish in Columbus, except those that were frozen by the weather outside.

Cross-examination:

Q. 1. What did you do for Mr. Davis at Northwood?

A. Milked twice a day and worked in the fields sometimes.

Q. 2. Did you put the milk in and out the box you have described?

A. Yes.

Q. 3. Did you have occasion to go into the cellar for any other purpose except to attend to the milk?

A. Yes, sometimes.

Q. 4. Was it often?

A. No.

136 Redirect examination:

Q. 1. State whether or not you ever saw at Northwood anything frozen in any box, or in anything else, except ice-cream.

(Objected to as leading.)

A. No.

Q. 2. State whether you ever heard of anything of the kind done there.

(Objection continued.)

A. No.

Q. 3. When you stated, in answer to question 18, that you never heard of any frozen fish in Columbus except those frozen by the weather, what did you mean?

A. I meant just what I said: that I never heard of any frozen fish in Columbus except what had been frozen by the weather. If they have been brought here frozen, they have been brought frozen from the lakes.

JAMES FARR.

Also JOSEPH FINGER, of lawful age, who, being first duly sworn according to law, deposes and says, to the interrogatories propounded, as follows, to wit:

Q. 1. Where do you live, what is your business, and how old are you?

A. I am forty years old; I work for the street railway company; and live in Columbus.

Q. 2. Did you ever know William Davis; if so, when and where?

A. Yes, sir; I commenced to work for him in 1851, in the spring, at Northwood; I worked for him pretty near two years, all the time, right along; I worked for him until he left Northwood and came to Columbus; I worked in Columbus for him as long as he was in the tavern.

137 Q. 3. What did you do at Northwood?

A. Milked twice a day and worked in the field.

Q. 4. State whether you ever saw there any ice-box or refrigerator?

(Objected to as leading.)

A. There was an ice-box there that they kept milk in.

Q. 5. More than that one?

A. That was the only one I saw.

Q. 6. If there had been any more there would you have seen it?

(Objection continued.)

A. I suppose so. I never was any further around in the cellar than that one box.

Q. 7. Did you ever see or hear of any meat or chickens being frozen there in warm weather?

(Objection continued.)

A. No, sir.

Q. 8. What kind of a box was this ice-box; describe it; give size, &c.?

A. It was about eight feet long, four feet wide, about three and a half feet high. He kept milk in and ice; the ice was laid on the bottom and the milk on the shelves.

Q. 9. Was it different from any common ice-box? If so, how did it differ?

A. The box was made out of tin in the inside; the box was in the cellar, just by the door.

Q. 10. Where was the box tinned?

A. It was tinned all around in the inside of the box.

Q. 11. Was there one or more apartments to the box?

A. Only one.

Q. 12. Did you ever see at Northwood a man by the name of Jonathan F. Neereamer, or hear of such a man being there?

138 A. Not as I know of.

Q. 13. State whether or not you are a German.

A. Yes, sir.

Q. 14. What was the outside of this box?

A. It was a two-inch plank.

Q. 15. Did they freeze ice-cream there?

A. They made ice-cream there is all I know.

Cross-examination:

Q. 1. What are you doing now?

A. I am working in the street-car stables, taking care of horses.

Q. 2. When did you come from Germany?

A. In 1849.

Q. 3. Could you talk English when at work for Mr. Davis at Northwood?

A. Not when I first came there.

Redirect examination:

Q. 1. Can you remember any one that was working there at the same time you were, except James Farr?

A. A man by the name of Fred Schmidt. I can't remember any others. There were a good many others, but I can't remember their names, because I could not speak much English. There are none but James Farr living around here that know of.

JOSEPH FINGER.

Also HIRAM SIMONTON, of lawful age, who, being first duly sworn according to law, deposeth and says, to the interrogatories propounded, as follows, to wit:

Q. 1. What is your age and where do you reside?

A. My age is 66; I reside in Columbus.

Q. 2. How long have you lived in Columbus?

A. I came to Columbus permanently the 10th day of September, 1849.

Q. 3. From that time up to 1861 what was your business?

139 A. I was engaged in hotel-keeping and livery.

Q. 4. In 1853 and 1854 what hotel did you keep?

A. In 1853 and 1854 I kept the United States Hotel.

Q. 5. When did you commence keeping that hotel and when did you leave it?

A. I commenced keeping it—I am not certain whether it was on the first day of April, 1853, or 1854—I think in 1854. Before that, in 1849, I kept the Buckeye Hotel.

Q. 6. Did you know William Davis during the time he lived in Columbus?

A. I did.

Q. 7. Did you buy fish of him for your hotel?

A. I have bought fish from Mr. Davis for my hotel.

Q. 8. How many regular fish-dealers were there in Columbus during the years 1852, 1853, 1854, 1855?

A. That question I cannot answer correctly. I know of three fish-dealers—David Joyce, (now dead,) and a man, I think, by the name of Barker, (also dead,) and Mr. William Davis.

Q. 9. Did you buy all the supplies for your hotel yourself?

A. I was the only buyer, unless I was absent.

Q. 10. Did you ever buy of William Davis or any other person, during these years, any fish frozen by any artificial process?

(Objected to as leading.)

A. I never did to my knowledge; nothing more than fish come in barrels packed in ice.

Q. 11. When did you first hear of any such thing?

A. To the best of my knowledge it must have been as late as 1867, 1868, 1869, or 1870.

Q. 12. How did you first hear of it?

A. I read it in a newspaper.

Q. 13. When did you quit the hotel business?

140 A. I believe that I sold out and gave possession on the first day of January, 1865; I think it was 1865.

Q. 14. Did you ever hear of any such frozen fish until after you sold out your hotel?

(Objected to as leading.)

A. I did not.

Q. 15. Do you know who kept American Hotel, in Columbus, from 1850 to 1855?

A. William Kelsey.

Q. 16. Where is he?

A. I believe he is in St. Louis, Mo.

Cross-examination:

Q. 1. What year did you buy fish of Mr. William Davis?

A. I don't know; I suppose it must have been from 1853, and some time later, perhaps.

Q. 2. When was Mr. Davis in the fish business in Columbus?

A. I think it must have been later than 1853.

Q. 3. Was he not in the fish business in Columbus in 1850?

A. That question I will be unable to answer correctly; I don't know; he may have been.

Q. 4. Can you tell what month or months in the year you bought fish from him?

A. Well, I cannot say.

Q. 5. Can you tell what year you bought fish of him?

A. I cannot tell certain.

Q. 6. How many fish did you ever buy of him?

A. I cannot say; he was not my regular fish-dealer.

H. SIMONTON.

Also PETER AMBOS, of lawful age, who, being duly sworn according to law, deposes and says, to the questions propounded, as follows, to wit:

Q. 1. What is your residence and occupation?

141 A. I reside at Columbus; I am president of the First National Bank.

Q. 2. How long have you resided in Columbus?

A. I have resided in Columbus for thirty-eight years; came here in 1834.

Q. 3. Were you, from 1852 to 1856, one of the proprietors of the firm of P. Ambos & Co., confectioners and restaurant-keepers?

A. I was, up to the spring of 1854, when I sold out.
Q. 4. Was Jacob S. Ritze in your employ at that time?
A. Yes.
Q. 5. Did you know William Davis at that time?
A. I knew Mr. Davis; I don't know whether his first name was William or not.
Q. 6. Did you buy of Mr. Davis, or any one else, any artificially-frozen fish at that time?
(Objected to as leading.)
A. I did not know anything of artificially-frozen fish at that time; the fact is that I did not do the marketing in those days myself.
Q. 7. When did you first hear of artificially-frozen fish?
A. That is hard to tell. I can't answer within three or four years. All I know about it is what I read in the papers.

Cross-examination:

Q. 1. Did you have personal charge of the details of the business of P. Ambos & Co.?
A. Yes, sir.
Q. 2. Did you attend to the marketing yourself?
A. No, sir.
Q. 3. What was the state of your health in 1853 and 1854?
(Objected to as incompetent, immaterial, and irrelevant.)
A. I was sickly the season I had to sell out. I was up at Lake
142 Superior that summer. I think it was in 1852.

P. AMBOS.

JAMES A. WILCOX,
Special Examiner.

U. S. circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL.

On reading and filing consent, and on motion of M. B. Andrus, solicitor for the complainant in the above-entitled suit, it is hereby ordered, that Frederick W. Cogswell, esq., counsellor at law, of Sandusky, Ohio, be, and he is hereby, appointed a special examiner in this suit, to take testimony therein, to be read and used on any hearing of said cause.
Dated New York, April 20, 1872.
(Signed) SAM'L BLATCHFORD.

A copy:

KENNETH G. WHITE, *Clerk.*

(Indorsed:) U. S. circuit court, southern district of New York—in equity. Enoch Piper vs. Geo. T. Moon et al. Certified copy order appointing F. W. Cogswell, of Sandusky, special examiner. M. B. Andrus, complainant's solicitor, 27 Chambers st., New York.

143 United States circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL.

SIR: Please take notice that on Monday, the 29th day of April, instant, at 10 o'clock a. m. of that day, and thereafter pursuant to adjournment, I shall proceed to take testimony and examine witnesses on the part and

behalf of the complainant in the above-entitled suit, before Frederick W. Cogswell, esq., a special examiner appointed in said suit to take testimony therein, at his office, in the city of Sandusky, Ohio, and that the testimony so taken will be read and used on the part of the complainant on any hearing of said cause.

Dated April 20, 1872.

Yours, &c.,

M. B. ANDRUS,
Complainant's Solicitor, 27 *Chambers st., New York.*

To GEO. GIFFORD, Esq.,
Defendants' Solicitor.

(Indorsed:) U. S. circuit court, southern district of New York—in equity. Enoch Piper vs. George T. Moon et al. Copy notice. M. B. Andrus, complainants' solicitor, 27 Chambers st., New York.

144 I hereby admit due and timely service of a notice, of which within is a copy, this 20th day of April, 1872.

GEO. GIFFORD,
Defendants' Solicitor.

U. S. circuit court, southern district of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL.

Deposition of sundry witnesses taken before me, Frederick W. Cogswell, as special examiner in above-entitled cause, at my office, in the city of Sandusky, county of Erie, and State of Ohio, on this 29th day of April, A. D. 1872, in pursuance of the attached order and notice, and at the time in said notice specified, to be read and used on the part of the complainant on the hearing of said cause.

George H. Prentis, esq., appeared as solicitor for complainant, and Charles A. Kent, esq., as solicitor for defendants.

LORENZO ANTHONY, being by me first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and business?

A. My name is Lorenzo Anthony; age, 45 years, April 10, 1872; residence, Sandusky, Erie County, Ohio; am engaged in the fish business.

Q. 2. Did you know William Davis while he lived in Sandusky?

A. I have had an introduction to Wm. Davis, but am not particularly acquainted with him.

145 Q. 3. When did he live here?

A. I am not very good in dates. I think somewhere about 1856. Am not positive about the time; think it was about that time.

Q. 4. What was his business here?

A. He kept a hotel—"the Veranda"—while I knew him.

Q. 5. How long have you been in the fish business in Sandusky?

A. I have been fishing and in the fish business together since 1846. I commenced shipping fish as early as 1850. I have not shipped fish regularly since then. Have been out of the business several times since then and in it again.

Q. 6. State what years, since 1850, you have been in the fish business and shipped fish in Sandusky.

A. Now that is a pretty difficult question to answer. In 1856 I shipped fish to Cincinnati with my brother, who was then alive. The next party I can give any data of was L. Anthony & Co., which was Lea & Moss, with me; I can't give the exact date I was with Lea & Moss; I was with them two seasons, certain; my recollection is that I was with Lea & Moss in 1865 and 1866; might have been in 1864 and 1865; 1865 was one of the seasons, I'm certain. I shipped fish with Anthony & West in 1869 and 1870.

Q. 7. From what place has Cincinnati and Columbus been supplied with fresh lake fish?

A. They have been supplied partially from this place.

Q. 8. Where was the supply obtained from 1850 to 1860?

A. At that early date I knew of no fresh fish being shipped to those points except from Sandusky; still there might have been.

Q. 9. If shipped from Detroit, what route would they take?

A. The only route I knew of then would be by Detroit boat to San-
146 dusky. The Arrow ran here then, I think. The Arrow or Bay City were the principal boats. Think the Scott ran here then. They went from here to Columbus and Cincinnati by rail.

Q. 10. When did you first know of artificially-frozen fish?

A. In 1867.

Q. 11. When did you first hear of them?

A. In 1866, I think, about a year before.

Q. 12. State whether or not you were acquainted with the methods and times of fishing in Lake Erie, Detroit River, and the lakes above from the year 1850 to the year 1860.

A. I was.

Q. 13. State whether or not white-fish or other fish were caught at Detroit, when they could not be, or were not, caught at Sandusky?

A. That is a very difficult question to answer—the difference of catching white-fish. The time I want to get at is—in them days we caught white-fish here in October, and in Detroit River in November—from three to five weeks difference in time. That would be what we call the "heft" of the fishing. I can't tell the difference in time as to other fish.

Q. 14. Were there any white-fish caught at any place below Lake Huron, at any other time than in the fall of the year, as above stated?

A. Yes, sir.

Q. 15. In what quantities?

A. I could not tell you, sir.

Q. 16. Where were they caught?

A. Off Long Point, Erie, Pennsylvania. I don't know of any other place.

Q. Where were trout caught?

A. Trout has been caught in all the lakes that I know of; very limited in Lake Erie.

Q. 18. Any in Detroit River?

A. I never knew of any.

Q. 19. What is the season of catching trout in the lakes below Lake Huron?

A. The summer season.

147 Q. 20. Where was it that you heard fish were frozen by artificial means, when you first heard of it?

A. I first heard that they were frozen at Boston and New Brunswick.

Q. 21. Where did you first, of your own knowledge, know of their being frozen?

A. In Sandusky.
Q. 22. By whom?
A. West & Smith—Robert F. West and Leonard D. Smith.

Cross-examination by Chas. A. Kent, esq., solicitor for defendants:

Q. 1. When was the railroad from Detroit to Toledo first built?
A. I can't tell you the exact date.
Q. 2. Was it not prior to 1860?
A. I could not say.
Q. 3. Can you say that fish could not have been shipped by rail, all the way from Detroit to Cincinnati, prior to 1860?
A. I could not.
Q. 4. Can you say that fish could not have been shipped from Detroit to Cleveland by boat, and from thence by rail to Cincinnati, prior to 1860?
A. I could not say positively.

LORENZO ANTHONY.

Sworn to before me and subscribed in my presence, by Lorenzo Anthony, this 29th day of April, A. D. 1872.

FREDERICK W. COGSWELL,
Special Examiner.

FREDERICK W. ALVORD, also being first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?
A. Frederick W. Alvord; 36 years; Sandusky; merchant, fish and commission merchant.
148 Q. 2. How long have you been in that business?
A. Since June 13th, 1857, in Sandusky, Ohio.
Q. 3. When did you first hear of artificially frozen fish, and where?
A. About one year before West & Smith went into business at Sandusky, and I heard it at the East. I can't give the year.
Q. 4. At what place East?
A. Boston.
Q. 5. When and where did you first see anything of the kind?
A. In Sandusky; the first season that West & Smith were in business here—Robert F. West and Leonard D. Smith.
Q. 6. Who was it that was engaged in that business of artificially freezing fish.
A. West & Smith, the above-named firm.
Q. 7. Do you know Gilbert Comstock, of New York city; and if so, when and where did you first see him?
A. I do know him; first saw him in Sandusky, in 1864, in the fall.
Q. 8. What was his business here, and where did he go?
A. He came here to make arrangements to buy fresh fish; said he was going to Detroit.
Q. 9. What else did he say?
A. He said his business in Detroit was to arrange for "pen-fish."
Q. 10. Did he say to you who he had arranged with, or who he was going to arrange with?
A. I understood from him that Mr. Clark and Mr. Davis were going to ship his fish—the fish used in Fulton Market, New York.
Q. 11. Did you ever ship any fish to Comstock; and if so, when?
(Question objected to as being leading and irrelevant by defendants' attorney.)

A. I have; in the fall of 1864. I fix the dates from my book—from the entries in my book.

149 Q. 12. What entries?

A. Entries of sales of fresh fish.

Q. 13. To whom?

A. Baker & Comstock.

Q. 14. Who composed the firm of Baker & Comstock?

A. Gilbert Comstock said he was one of them; Mr. Baker I don't know.

Q. 15. Did you ever know Mr. William Davis, in his life-time?

A. I did not know the father of the Davis Brothers.

Q. 16. Do you Samuel H. Davis and David W. Davis, of Detroit?

A. I am acquainted with the Davis Brothers there.

FR'D. W. ALVORD.

Sworn to and subscribed before me, by Frederick W. Alvord, this 29th of April, 1872.

FREDERICK W. COGSWELL,
Special Examiner.

CLIFTON HADLEY, also being first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and business?

A. My name is Clifton Hadley; residence, Sandusky, Ohio; my age is sixty-seven, and business is real estate and insurance agent.

Q. 2. What was your former business, and how long have you resided in Sandusky?

A. My business used to be groceries and provisions, and dealing in fresh and salt fish; I have resided in Sandusky ever since 1834, except from 1838 to 1840.

Q. 3. Did you know William Davis when he lived in Columbus, when he lived in Sandusky, and after he moved to Detroit?

A. I did.

150 Q. 4. How well did you know him?

A. Well, I might say I was intimately acquainted with him.

Q. 5. When did you first know him in Columbus?

A. I should think it was in 1852; it may have been a little before that or a little later.

Q. 6. About when did he come to Sandusky, Ohio, to live?

A. I should think during the year 1854 or 1855.

Q. 7. What was his business in Sandusky?

A. Well, he kept a boarding-house and dealt some in fish.

Q. 8. Do you know who supplied him with fish in Columbus?

A. I think I supplied him the most of the fish he got from this place.

Q. 9. When did he move from Sandusky to Detroit?

A. From some memoranda that I have, I think it was between the 6th and the 10th of December, 1856.

Q. 10. Did you ever talk with Davis about keeping fresh fish; and if so, how often?

A. We have had some conversations in regard to that.

Q. 11. Did you have frequent conversations with said Davis about your fish business, &c., while he lived in Columbus and Sandusky, and after he moved to Detroit?

A. I did while he was in Columbus, and also here. I had no dealing with him in fish while he was in Detroit.

Q. 12. Did or did you not meet him frequently after he moved to Detroit, and talk with him?

A. Well, I hardly know how to answer that, so as to have it put down as concisely as possible. I did not see him so often after he went to Detroit. I think I met him either there, or away from there, as often as half a dozen times a year.

Q. 13. Was he in the habit of talking with you about his business and his business plans?

151 (Question objected to as leading and immaterial by defendant's solicitor.)

A. He was always free to do so.

Q. 14. Did you ever hear him say anything about freezing fish or other substances by artificial means, or anything of the kind, or anything about any patent refrigerator; and if so, when?

(Question objected to as being leading and incompetent.)

A. I have. I should think it was about 1868.

Q. 15. Was this the first you ever heard him speak of it?

A. It was, to the best of my recollection.

Q. 16. When and where did you first know or hear of fish or animal substances being artificially frozen?

A. It was about the time Mr. Piper's freezer was put up here for West & Smith. It was the freezer put up here in Sandusky for those parties, Robert F. West and Leonard D. Smith.

Q. 17. Did you ever hear any intimation of anything of the kind until that time?

(Question objected to as leading and incompetent.)

A. I did not.

Q. 18. Can you give the year this was?

A. No, sir, I can't; I think it was about 1867.

Q. 19. What time in the year did you ship fish to Mr. Davis, at Columbus?

A. Fall and spring.

Q. 20. Any in warm weather?

A. No, sir.

Q. 21. Any shipped from Sandusky to Columbus in warm weather, when Mr. Davis lived in Columbus?

A. No; there was very few, if any, fish shipped after the 10th of June until the 1st of October, at that time.

152 Cross-examination:

Q. 1. Is not the weather at Columbus often quite warm in the last of April, May, and first of June?

A. It is.

Q. 2. Were not Mr. Blosier and Mr. Dibble in the fish business at Sandusky when Mr. Davis lived at Columbus?

A. I think Mr. Blosier was; I can't say as to Mr. Dibble.

Q. 3. Did they not, one or both, ship to Mr. Davis at that time the largest portion of the fish he received from Sandusky?

A. My impression is they did not, while I was shipping to him.

Q. 4. What memorandum is it by which you determine that Mr. Davis left Sandusky for Detroit from the 6th to the 10th of December, 1856?

A. I have a writing with Mr. Davis' name signed to it, dated December 6, 1856.

Q. 5. Is that writing his note?

A. Is is.

Re-examination:

Q. 1. What was that note given for?

(Question objected to as being immaterial.)

A. It was given on settlement of account.

Q. 2. When you say, in answer to first question on cross-examination, that the weather at Columbus is often quite warm the last of April, May, and first of June, do you mean that it is steady warm weather, or that there are occasional warm days?

(Question objected to as leading.)

A. I mean there are occasional warm days.

CLIFTON HADLEY.

Sworn to before me and subscribed in my presence by Clifton Hadley, this 29th day of April, 1872.

FREDERICK W. COGSWELL,
Special Examiner.

153 ROBERT F. WEST, also being first duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Robert F. West; age, 28 years; residence, Sandusky, Ohio; am a manufacturer of wooden ware.

Q. 2. How long have you lived in Sandusky?

A. Twenty years.

Q. 3. What was your business in 1866 and 1867?

A. In 1866 I was engaged in the dry-goods business; in the fall of 1867 I was engaged in the fish business?

Q. 4. When and under what circumstances did you first hear of artificially freezing fish and animal substances?

A. I can't give the exact date; in the neighborhood of July, 1867, I received a letter from Mr. Smith, giving me the particulars of Mr. Piper's freezer, or about it; he also stated he could sell all the fish we could freeze. He, at the time the letter was written, was in the employ of Gilbert Comstock as clerk, or of Comstock & Harris, in New York City. (I think it was Comstock & Harris at that time, but am not sure.) He soon after left New York, came here, and we decided to go into business together under the firm-name of West & Smith. About the middle of August, 1867, I went to St. John, New Brunswick, to find Mr. Piper, saw him, and obtained a license to freeze fish and other animal matter in all the counties adjoining or abutting upon Lake Erie, in the State of Ohio.

(All of the foregoing answer, after the words "I can't give the exact date; in the neighborhood of July, 1867," objected to as irrelevant and incompetent by defendant's solicitor.)

Q. 5. When and where did you first put up the apparatus, if at all?

A. In Sandusky, Ohio—nowhere else; in the fore part of September, 1867.

154 Q. Are you the Robert F. West that was in partnership with Leonard D. Smith in Sandusky?

A. Yes, sir.

Q. 7. Was what you have stated the first you knew or heard of thus freezing fish or animal substances?

A. Yes, sir.

ROBERT F. WEST.

Sworn to and subscribed before me by Robert F. West, this 29th day of April, A. D. 1872.

FREDERICK W. COGSWELL,
Special Examiner.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Frederick W. Cogswell, a commissioner of the United States within and for said district, residing and practising in the city of Sandusky, Ohio, therein, the identical person named in the attached order as special examiner to take testimony in the above-entitled suit, do hereby certify that the above-named witnesses, Lorenzo Anthony, Frederick W. Alvord, Clifton Hadley, and Robert F. West, were by me first duly and severally sworn to testify the truth, the whole truth, and nothing but the truth in said above-entitled cause; that the foregoing depositions of said witnesses were reduced to writing by me in the presence of said witnesses, and by them respectively, after being read to them and each of them, sworn to and subscribed in my presence, and that they were taken in pursuance of the attached order and notice, and at the time and place in said notice specified, to wit, at my office, in the city of Sandusky, Erie County, Ohio, on this 29th day of April, A. D. 1872.

FREDERICK W. COGSWELL,
U. S. Commissioner and Special Examiner in the above entitled suit.

Fees, $10. Paid by complainant.

155 United States circuit court, southern district of New York, in equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL.

Testimony taken on the part of the defendants by Don. M. Dickinson, examiner in equity, specially appointed by the order of said court, on the tenth day of April, 1872, at 11 o'clock in the forenoon.

Present, Mr. Holmes, for the complainant, and Mr. Kent, for the defendants.

SAMUEL H. DAVIS, a witness, produced and duly sworn on behalf of defendants, being examined, testifies as follows:

Q. What is your age and residence?
A. My age is thirty-six; residence, Detroit, Michigan.
Q. How long have you resided in Detroit?
A. Since 1856.
Q. Since what time in 1856?
A. I was here a good part of the fall of 1856, but came here to stay permanently in November of that year.

156 Q. Where did you reside prior to coming here?
A. One year in Sandusky City, and before that, at Columbus; went to Columbus about 1848, and resided there till about 1855; about 2½ miles out of the city of Columbus part of the time, at a place called Northwood.
Q. What is your father's name?
A. William Davis.
Q. Is he dead?

A. Yes, sir.
Q. When did he die?
A. In the fall of 1868.
Q. Was he the patentee of the patent called Davis' refrigerator?
A. Yes, sir.
Q. What has been your business in Detroit?
A. Fish, oyster, and fruit business; principal business was fish business.
Q. Prior to the death of your father, in 1868, with whom were you associated in business?
A. With him—father.
Q. How long had you been associated with him in business?
A. Since 1856; I had been in partnership with him ever since I came to Detroit.
Q. What were your business relations with him when you lived in Sandusky and Columbus?
A. In both places I was working with him.
Q. What was your father's business in Sandusky?
157 A. Mostly he kept hotel; he fished a little, also.
Q. What was he doing in Columbus?
A. After 1849 he sold fish in the market; he had other business; he run a hotel.
Q. What was he doing at Northwood?
A. He had a pleasure house.
Q. What sort of a pleasure house?
A. A pleasure resort for people to come from the city for meals, ice-cream, etc.
Q. When he resided at Northwood did you know of your father preserving fish, poultry, meats, and so forth?
A. Yes, sir.
Q. What year was that?
A. 1851 and 1852.
Q. State the method in which fish, poultry, meat, etc., were preserved by him at that time.
A. He had several large ice-cream freezers. He put one of them into a flaring tub; then he put the flaring tub into a square box, and packed the space between the flaring tub and the box with either charcoal or sawdust, which was also packed underneath the flaring tub; the ice and salt then went between the flaring tub and the freezer that I have mentioned; the freezer was in the center; the freezer formed the preserving-chamber.
Q. What did your father put in that chamber?
A. Meat, chicken, fish; the fish were not put in with meats in the same chamber at the same time.
158 Q. How, if at all, was the top of the freezer covered?
A. Covered with a woolen blanket, and generally put a board on top of the blanket.
Q. Was there any atmospheric communication between the preserving-department, which you call a freezer, and the surrounding chamber, which contained the freezing-mixture?
A. No, sir.
Q. How large were the freezers, as you call them, which you used—the freezing-chambers?
A. I should say they would hold about ten to twelve gallons.
Q. Where did you put the things to be preserved—in what manner did you put them into the freezing-chamber?

A. They were generally placed on the bottom; then if we put in more than one article we placed a board between to keep them separate, so that they would not freeze together.

Q. Did your father use more than one apparatus at that time for the purpose of preserving meat, fish, poultry, etc.—such as you have described?

A. Two or three of them.

Q. In this apparatus was the freezing or preserving chambers stationary or revolvable?

A. Stationary.

Q. What success did your father have in preserving meats, poultry, and fish, in the manner you have stated, at that time?

159 A. In a frozen state he could keep them for any length of time; unfrozen, for a few days.

Q. Did he have any difficulty in freezing them when he wished to with this apparatus at that time?

A. No, sir.

Q. How commonly did he use this means of freezing and preserving the articles named?

A. He used it daily; this was at Northwood, during the years 1851 and 1852.

Q. What was the reason which rendered it necessary for him to preserve the articles which have been mentioned in this manner?

A. He had to keep a supply of the stuff on hand for visitors.

Q. Did you yourself see what was frozen in this manner at that time?

A. Yes: I helped do it.

(Tin vessel or model shown witness.)

Q. How far does this correspond with the apparatus which you have just described as having been used by your father at Northwood?

A. There is no difference so far as the freezing-chamber is concerned; it corresponds exactly; but the apparatus was all wood, except the freezing or preserving chamber; and in the apparatus which I have heretofore described there was a tube to carry off the water, which I have omitted to describe before.

(Tin vessel or model is here introduced in evidence by defendants' counsel, and is marked "Exhibit C.")

160 Q. Where, in the model, (Exhibit C,) is the place for the non-conducting material—charcoal or sawdust?

A. Between the two chambers; between the outside wall and the next wall, I mean. In the model there is no communication into the chambers where the non-conducting material was put in the apparatus.

Q. After you and your father left Northwood where next did you go?

A. We moved into Columbus city.

Q. What business were you in there?

A. He run a hotel a year, and then he was in the fish business.

Q. Were you with him in the fish business?

A. I worked with him.

Q. Did you preserve fish at that time by freezing?

A. Yes, sir.

Q. To what extent did you thus preserve fish?

A. We froze what was left over from the markets three (3) times a week; and when there was any left over from one market they had to be kept till the next then.

Q. How large an amount of fish did you thus keep over from one market day to the other?

A. Sometimes from one hundred pounds up to seven (7) hundred pounds

Q. Did you keep any longer than from one market day to the other?

A. No; I don't think we did.

161 Q. Describe the apparatus by which you thus kept or preserved fish.

A. It was one box put inside of another, and that was packed with sawdust; the space between the two boxes, I mean, was packed with sawdust. There was a partition off of one end of the inside box about six or eight inches; the partition consisted of tin.

Q. Go on and describe.

A. Then there was a lid on both boxes, a lid on the box for the preserving-chamber, and one on the chamber where the freezing-mixture was—of ice and salt.

Q. Was there atmospheric communication between the preserving-chamber and the place where the freezing-mixture was?

A. No, sir.

Q. State what the practical method was of preserving the fish by this apparatus.

A. We placed the fish into the preserving-chambers; we had shelves in there so that the fish would not be more than four to six inches deep; we first put a layer of fish four to six inches deep on the floor of the preserving-chamber at the bottom; we then had cleets on the sides, on which we then laid boards over, and so continued till the box was full.

Q. After the preserving-chamber was thus filled, what did you do next?

A. We filled up the other chamber with ice and salt; this chamber was covered with a close-fitting cover.

162 Q. How was the preserving-chamber?

A. That was covered with a close-fitting cover or door.

Q. How long did it take to freeze fish with this apparatus?

A. That would depend altogether on the quantity that was put in there.

Q. Well, supposing you filled the preserving-chamber with fish, and the other chamber with the freezing-mixture, how long would it take?

A. Those next to the tin partition would freeze in a few hours, and those farther away would take longer; it would take some time to freeze them all.

Q. What do you mean by some time?

A. We never froze a whole boxful by filling the box up solid.

Q. Were you able in this way to preserve the fish which were at a distance from the freezing-chamber?

A. We preserved them long enough till we used them; they would not keep there any great length of time without freezing.

Q. How often did you change the freezing-mixture—fill it up, I mean?

A. Three or four times in twenty-four (24) hours; three times generally.

Q. Did you have in use at that time and place more than one apparatus of the kind you have described?

A. We had two of them.

163 Q. How large were these?

A. Hold about five hundred pounds of fish each.

(A model is here introduced in evidence, marked Exhibit A, and is shown witness, and he is asked:)

Q. How far did the apparatus which you have just described agree with this model?

A. This is a single box, and the other was a double box and had non-conducting walls.

Q. Does this model agree with the apparatus in every particular, except that the double wall and non-conducting material between is not shown by the model?

A. It does; this is merely designed to show the inside working and not the outside walls.

Q. At what time and for how long did you use the boxes or apparatus you have just described, for the freezing and preservation of fish?

A. In the years 1854 and 1855, at Columbus, Ohio; during the warm weather of both years.

Q. Did you yourself see fish frozen in this apparatus during those years?

A. Yes, sir, and sold them out of it.

Q. From Columbus to what point did you remove?

A. To Sandusky, Ohio, and from there to Detroit, Michigan. We didn't use this apparatus in Sandusky.

Q. When in Detroit, did you have any method of preserving fish by freezing?

A. We had a box for freezing fish in, in Detroit, in 1856, late in the fall.

164 Q. Describe the box you used in Detroit in 1856, and afterwards, if you used it.

A. We had a square box about four feet square inside, and about five feet high. That box also had double walls and was packed with sawdust between the walls; it had a tin tube down through the center of it; had a double side-door; it had a door in the inside wall and one on the outside corresponding. The freezing-mixture we put in the tube. The drip was conducted off by a pipe from the tube in the centre through the bottom of the box.

Q. Where did you put the fish to be frozen or preserved?

A. We hung them up on hooks close to the tube. We had cross-sticks and hooks in the sticks.

Q. How many fish could you put in that box at once?

A. About a hundred pounds we could freeze at a time.

Q. After they were frozen what did you do with them?

A. We took them off the hooks and put them in the bottom of the box.

Q. How many could you preserve in the box after they were frozen in the manner you describe?

A. From five to six hundred pounds.

Q. What connection, if any, was there between the central tube which contained the freezing-mixture and the chamber where the fish were kept?

A. No connection at all.

Q. How did you close the central tube?

165 A. With a plug.

Q. What did you do with the fish which you thus froze in the box?

A. We took them out of the box during the winter and forepart of the spring and sold them to the hotels.

Q. For how long a time did you use this box?

A. About three months.

Q. Did you ever use this box after the expiration of three months anywhere?

A. Here in this city in my store, in the Russell House block, in 1864 or 1865.

Q. For how long did you use this or a similar box?

A. We used that about a year.

Q. When you say you used the box about three months, what do you mean by it?

A. I mean that we kept it running steady three months during the winter of 1856–'7, commencing in December, 1856.

Q. Immediately after the three months you have described in the winter of 1856–'7, did you continue to use this box; if so, for how long?

A. We used it part of 1857.

Q. What part?

A. Part of the summer.

Q. Where was your place of business in Detroit in 1856 and 1857?

A. Had no place of business in 1856 only at the house where we lived.

166 Q. Was it there that you kept this box?

A. Yes, sir.

Q. Where in 1857 was your place of business in Detroit?

A. On the dock, Barnum's dock; I think between First and Second streets, on the river.

Q. Where did you keep this box there?

A. Did not have this box; (box here produced in evidence and marked Exhibit B;) did not have this box (Exhibit B) on the dock.

Q. How far does Exhibit B correspond with the box you have last described?

A. In every respect, except that the box described had double walls, double doors, and sawdust filled in between the walls.

(Box is here shown witness and is introduced in evidence and marked Exhibit D.)

Q. Of what is this a model?

A. A model of a box we used in 1857.

Q. What part of 1857?

A. It was made in the spring, I think, and we used it all summer.

Q. Does this model exactly represent the box you then used?

A. Yes, sir.

Q. For what purpose did you use the box of which Exhibit D is a model?

A. Used it for freezing fish.

167 Q. For how long a time could you preserve fish with that box thus used?

(The last question is objected to by Mr. Holmes on the ground "that it does not appear that the box was ever used as implied from the question." By Mr. Kent: "The question is withdrawn for the present.")

Q. When the fish were frozen in the last-described box where were they kept afterwards?

A. Kept in a box of which Exhibit D is a model; same box as frozen in.

Q. For how long a time did you keep them in that box?

A. I should judge we kept them there a month.

Q. In the summer-time?

A. In the summer-time.

Q. Until what time did you keep fish frozen in the box? What made you take them out at any particular time?

A. We kept them to see how long they would keep. We took them out when we sold them.

Q. How long could you have preserved fish in that box?

(Objected to by Mr. Holmes for form and substance.)

A. Keep them in there for any length of time.

Q. How often would you have had to fill up the chamber containing the freezing.mixture?

(Same objection made by Mr. Holmes as to the last question.)

168 A. Filled it up twice a day; morning and evening.

Q. How many fish did you keep in the box of which Exhibit D is a model; keep frozen, I mean?

A. About two hundred pounds.

Q. Where were the fish placed in the preserving-chamber in box of which Exhibit D is a model?

A. Placed on shelves. The shelves were across the preserving-chamber.

Q. How was the preserving-chamber separated from the chamber containing the freezing-mixture?

A. By a tin partition, and there was no communication between the two chambers.

Q. For how long a time did you use this box?

A. During 1857, and again in 1859, and then again in 1862.

Q. Where was this box kept in 1857?

A. On the dock previously described.

Q. What was the condition of fish frozen in this box, and kept there for a considerable time, when taken out?

A. Condition was good, because they were frozen hard.

Q. Were they injured or uninjured?

A. Uninjured.

Q. Can you tell how many pounds of fish you froze and kept in this box during the summer of 1857—about?

A. Might have froze a ton or two of them; can't tell exactly; never kept an account of them.

169 Q. Did you ever undertake to preserve vegetables or fruits in this box?

A. Yes, sir.

Q. What success did you have?

A. Could not keep any vegetables or fruits in it very long, as they would spoil; they would freeze next the tin, and spoil away from it on the opposite side.

Q. Were you or your father experimenting to remedy this difficulty?

A. Father was working to remedy it.

Q. What was he trying to accomplish?

(By Mr. Holmes: Objected to as calling for the witness's opinion of his father's intentions, and not for facts.)

A. Trying to get an inside circulation of air; something that would pick up the moisture of fruits, and so on.

Q. At what time did he finally, if ever, succeed in his attempt?

A. In the spring of 1868; a short time before we got the patent.

Q. Are you familiar with the common method of making ice-cream?

A. Yes, sir.

Q. Have you ever made ice-cream?

A. Yes, sir.

Q. When did you first make ice-cream, or see it made?

A. In 1851.

Q. Describe the apparatus with which you made it at that time.

170 A. It was a tin cylinder with a close-fitting cover on top, and bottom closed also, and that sat into a wooden tub, with ice and

salt in the tub around the tin, so that there is no communication from the freezing-mixture into the freezer.

Q. Where did you put the cream to be frozen?

A. Put it in this tin cylinder.

Q. How full did you fill the can for the cream?

A. About half full when I froze.

Q. Did it freeze by putting it in, as you have said, or was there anything else?

A. We generally turned it if we were in a hurry for it. It would freeze without turning it.

Q. Was there any atmospheric connection between the vessel containing the freezing-mixture and the cream to be frozen?

A. There was not.

Q. Did you ever preserve the cream thus frozen for any length of time?

A. Two or three days. It will stay frozen as long as you keep the ice and salt up and around it.

The examination of witnesses is here adjourned to Thursday, April 11th, 1872, at 10 o'clock a. m., by consent of counsel.

SAMUEL H. DAVIS, the witness above named, is cross-examined by Mr. Holmes, counsel for complainant, as follows:

171 Q. You are one of the owners of the Davis patent, are you not?

A. Yes, sir.

Q. Who are the other owners?

A. I own one-third of it, D. W. Davis has one-third, and the other third belongs to the estate of William Davis.

Q. Has Gilbert Comstock, of New York, any interest in the Davis patent?

A. No interest to divide with us; nothing outside of the use of his box; he might have bought some State right; don't know.

Q. Is the apparatus in Front street, New York, which the defendants here are sued for using, constructed according to the Davis patent, and under license from you?

A. It is licensed from us; I never saw the apparatus.

Q. Have you assumed the defence of this suit?

A. Yes, sir.

Q. What year did your father and you go to Northwood to live?

A. I think in the fall of '50.

Q. Are you sure that it was in 1850?

A. I think it was.

Q. Are you sure?

A. Can only answer to the best of my knowledge.

Q. What makes you think it was in 1850?

A. 'Cause father run the place in '51; I think we went out the fall before.

172 Q. How do you know he run the place in '51?

A. 'Cause we were there in '51 and '52.

Q. How do you know that?

A. I refer to his register or book at the house.

Q. How long did you remain at Northwood?

A. Can't get the exact time; think we left some time in the fall or fore part of winter of '52.

Q. Where did you live before you went to Northwood?

A. In the edge of Columbus city, close to the Ohio penitentiary.

Q. When did you go to Columbus to live? Of course you refer to your father as well as self.

A. Yes, I refer to father; went to Columbus sometime in 1848; it is a little beyond my recollection.

Q. Did you live with your father all the time he was in Columbus?

A. Yes, sir.

Q. When did you first see the apparatus marked Exhibit C; I mean the apparatus of which that (C) is a model?

A. At Northwood, two and a half miles from Columbus.

Q. Was this the first apparatus of the kind that you had ever seen?

A. I had seen an ice-cream freezer before, but never saw one used for freezing meats or poultry, previous to that time; I had seen it used for cream.

173 Q. Was this the first apparatus that your father ever used for the purpose of freezing meats, &c.?

A. No, sir.

Q. What was the first one?

A. I don't recollect what the first one was; father told me he had one, but I never saw it.

(Mr. Holmes objects to the last sentence as irresponsive.)

Q. Then this apparatus, Exhibit C, is the first one that you know anything about that your father made or used?

A. Yes, sir.

Q. And this was constructed when?

A. 1851.

Q. Have you given any affidavits in this cause?

A. Yes, sir.

Q. In an affidavit given by you on the 6th day of November, 1871, I find this statement: "In the year eighteen hundred and fifty-two, said William Davis had invented, and at that time was using, an air-tight box in which to place fish to be frozen, or other perishable articles to be preserved. Within this box was placed an air-tight metallic pipe within which to place the ice and salt when it was desired to freeze the contents of the box, or ice alone when it was not desired to freeze, but simply to preserve such contents. The box and pipe were so placed in relation to each other that when in operation there was no communication between the interior of the box and that of the pipe, so that the articles in the box could not be brought into contact with the ice
174 in the pipe, or receive any moisture from the melting ice in the pipe." Did you so swear in that affidavit?

A. Yes, sir; I swore to that.

Q. How large an establishment did your father keep at Northwood?

A. He kept a farm and pleasure resort.

Q. How large a business did he do?

A. He did a very large business.

Q. How large?

A. Well, a great many people came there; sometimes got meals for fifty; very uncertain. We did a very large business.

Q. Did he keep a milk-farm from which he sold milk?

A. Yes, sir.

Q. How many cows?

A. Neighborhood of forty.

Q. Did he sell milk?

A. Yes, sir.

Q. You say that he had three or four apparatuses like Exhibit C?

A. Two or three.

Q. What other kind of refrigerator did he have there at that time?
A. He had a very large one there to keep his milk in.
Q. Was that like Exhibit C?
A. No, sir.
175 Q. How did it differ?
A. It was merely a large box; I don't know whether the sides were filled in with some non-conducting material; don't know, though.
Q. Where was the ice put in that?
A. I can't tell you; never had anything to do with that box.
Q. How do you know, then, it wasn't like Exhibit C?
A. Because it was a very long box, and I don't think it was fixed that way.
Q. Have you any other reason except that it was a long box for not thinking so?
A. I have seen them take out and put in milk in pans, and if like Exhibit C, I don't think they could do it.
Q. Was all the milk kept in this large box?
A. I don't know.
Q. Was any milk ever kept in a box like Exhibit C?
A. Yes, sir.
Q. How often did your father send his milk to market?
A. What he sold of it, twice a day.
Q. How much milk was kept in the box like Exhibit C?
A. I never measured it; I couldn't tell you.
Q. Was milk kept there frequently?
A. Yes, sir.
Q. Do you mean that the boxes like Exhibit C were regularly used for keeping milk?
176 A. They generally used it for milk when they didn't use it for anything else. When we wanted to keep it for a long time we generally put the milk in there.
Q. Who made the boxes like Exhibit C?
A. I don't know.
Q. Were they made by your father himself or by some one employed by him?
A. I don't know; they were made, and in the cellar when I first saw them.
Q. Where did they stand in the house all the time they were there?
A. They were generally in the cellar; sometimes one of them up stairs.
Q. Where did the large milk-box of which you have spoken stand?
A. In the cellar; there were three or four or five apartments in the cellar; sometimes stood in the same apartment in the cellar, sometimes in another room.
Q. When these boxes were used for keeping milk what kind of a refrigerating-mixture did you use?
A. Used ice.
Q. What became of these boxes?
A. I don't know.
Q. When did you last see them or any of them?
A. I saw them at Northwood the last I saw of them; when he moved from there, don't know what become of them.
Q. Were they left in the house?
177 A. Don't know.
Q. Did you assist in moving?
A. No, sir; don't think I did.
Q. Wern't you there when you were moving?

A. I was in the city a few days before we moved, as near as I can recollect; I was not there to help move the goods; I was in the city.

Q. Did you ever see these boxes after you moved with your father into Columbus?

A. No, sir.

Q. While you were at Northwood were all the fish, meats, &c., kept in boxes like Exhibit C?

A. Don't think they were all; couldn't tell you that.

Q. Were they generally kept in these boxes?

A. If they wanted to keep it for a few days they would put it in them; as a general thing they used one of them for meats and chickens.

Q. How many fish did you ever see in one of these boxes or all of them at all times?

A. I couldn't tell you; I never weighed or counted them.

Q. Did you ever see one of them full of fish?

A. No, sir.

Q. Half full?

A. No, I don't think I did.

Q. Quarter full?

A. I think I have; never measured it.

178 Q. Were fruit and vegetables ever kept in these boxes?

A. Yes, sir; no length of time.

Q. For how long?

A. Couldn't tell; never kept any time.

Q. Did they keep well?

A. No, sir.

Q. Why not?

A. On account of the dampness; they would decay and mould.

Q. For how long a time do you know of fish being kept in any one of these boxes like Exhibit C?

A. For a few days at a time, I suppose; I never timed it.

Q. Did you freeze the fish in order to keep them for a few days?

A. Yes.

Q. How often did you have fish there that you wanted to keep for a few days?

A. I don't know—seldom; might have had them there every week, or might every two weeks.

Q. Please state as exactly as you can all the dimensions of the boxes like Exhibit C.

A. I can't give the exact dimensions; the preserving-chamber was of ten or twelve gallons capacity.

Q. How much freezing mixture did it take as the apparatus was used for fish?

179 A. I can guess at it; I should judge about one hundred pounds, or one hundred and fifty pounds.

Q. How many pounds of fish would the freezer hold for freezing purposes?

A. You can freeze solid with it, or freeze a few.

Q. How were the fish placed in the freezing-chamber?

A. On the bottom of the freezer, and no great amount kept in them.

Q. What kind of fish were ever frozen in this apparatus?

A. I don't know as I can tell exactly, as they used to be cleaned and put in there; what he kept there he used to keep for family use and for visitors who wanted them.

Q. Did you ever see fish in any of these boxes, except on the bottom of the chamber?

A. I don't remember as I did.

Q. How long did it take to freeze fish on the bottom of the chamber there?

A. I never timed it.

Q. Did you put in and take out fish from the apparatus?

A. Yes, sir.

Q. Was there any frost on the fish when you took them out?

A. I don't remember that.

Q. When fish were in the apparatus, did you always use ice and salt?

180 A. Well, I didn't run the thing all the time, and I couldn't tell whether we used it all the time; sometimes it was used and sometimes it wasn't.

Q. Was the chamber when in use moist?

A. No, it would be dry; there couldn't be any moisture if the fish were froze; it would be froze up.

Q. Were the fish ever frozen together?

A. Yes, sir.

Q. Were these boxes publicly or privately used?

A. Anybody could see them; there was no attempt at concealment.

Q. Please give the names, as far as you remember, of all persons employed about the house at Northwood at this time.

A. Of course the family was all there; you mean men who were employed; I can't remember one name.

Q. How many did your father have in his employ?

A. I couldn't tell exactly how many he had; sometimes more and sometimes less.

Q. How soon after your father moved to Columbus did you see the apparatus like Exhibit A, which you say was used there?

A. I don't remember having it before 1854, in Columbus.

Q. What was your father's business in Columbus from the time he went there till 1854?

A. He kept hotel there part of the time; I think he sold fish on the market, too.

181 (Adjourned till 2 o'clock p. m. same day.)

2 o'clock p. m.—Same counsel present.

Q. When your father moved from Northwood to Columbus did he take any boxes like Exhibit C with him?

A. Not to my recollection.

Q. You never saw any boxes like them at Columbus, did you?

A. Not to my recollection.

Q. If he had taken them you would have known it, wouldn't you?

A. Don't think I would.

Q. You were with him in Columbus, were you not?

A. I lived with him in Columbus; I went to school most of the time the first year we moved into the city.

Q. When your father left Northwood did he sell the place?

A. Yes, sir.

Q. To whom?

A. I am so poor recollecting names; I think it was Sam. Medary, of Columbus.

Q. When you did run the apparatus like Exhibit C, at Northwood, did you always use ice and salt?

A. Sometimes ice and salt, and sometimes ice alone.

Q. When you kept meat and poultry in it what did you use?

182 A. Sometimes ice and salt, and sometimes ice alone; I did not run them all the time, only occasionally.

Q. Were the meat and poultry frozen?

A. Sometimes it was, sometimes it was not.

Q. Were the fish always frozen?

A. I can't recollect whether they were always frozen or not; they were frozen, though there might be some that were not frozen.

Q. How many fish, as nearly as you can state, did you ever know to be actually frozen in any of these boxes like Exhibit C?

A. I never counted them or weighed them, and couldn't tell exactly.

Q. Don't ask you to tell exactly.

A. A person might guess at it; might be from ten to twenty pounds at a time.

Q. How many times were fish actually frozen in the apparatus? I am not speaking of being preserved, I am speaking of freezing.

A. Quite often; couldn't tell the number of times.

Q. In these apparatuses were the fish spread over the whole bottom of the box equally when they were frozen?

A. They were placed on the bottom generally; over the whole bottom, which was very small.

Q. Did the fish in the center freeze, as well as those on the sides?

183 A. Yes, they froze in the centre; they froze as hard in the centre, but it took a longer time to freeze them as hard there, as on the outer edge.

Q. Was there any frost on the inside of the freezing-chamber where the fish were?

A. Yes, there was, as near as I can recollect.

Q. What was your father's business in Columbus after 1854—during and after '54?

A. He kept boarding-house; couldn't tell exactly how long; he sold fish on the market, and got up a book called "The Family Registry."

Q. Did he sell fish before '54 in Columbus?

A. Yes, sir.

Q. And kept a hotel?

A. Kept a hotel in Columbus; yes, sir.

Q. What part of the year '54 did you first see a freezing-apparatus like Exhibit A?

A. In the spring.

Q. Where was it?

A. On High street, in my store—my individual store.

Q. What was your business, and what was the number of your store?

A. Fruit business; don't think there was any number to the store.

Q. Between what streets?

A. Can't tell; can tell what property it was on.

Q. What property was it on?

A. Deshler property.

184 Q. Who owned the building?

A. I did.

Q. Did you deal in anything else besides fruit?

A. Yes, sir.

Q. What?

A. Dealt in anything at all to speculate—peanuts or candy.

Q. In fish, at all?

A. I had no interest in that; I assisted father in that.

Q. Who made the apparatus like Exhibit A?
A. Don't know.
Q. Don't you know whether your father did or not?
A. I do not.
Q. Who put it into your store?
A. Can't tell who put it in there; father had it brought there.
Q. What for?
A. To keep fish in.
Q. Can you name any one who ever saw it there?
A. I don't remember any person, who I could swear, that saw it; I don't remember the names.
Q. What part of your store was it in?
A. Back part.
Q. Separated from the rest of the store?
A. No, sir.

Q. Please give us exactly as you can the dimensions of this box?
185 A. There were two of them there, both about the same size; they were longer than they were wide; I should judge they were four or five feet long, and I should judge about three feet wide and about the same in height.
Q. How much freezing-mixture would it hold?
A. I never weighed it, I can't tell exactly; I should think there was in the neighborhood of a hundred pounds weight, be it more or less.
Q. Did you attend to it personally?
A. Not altogether myself; father and I both attended to it.
Q. What did you use to produce the cold?
A. Ice and salt.
Q. Were the fish in it always frozen?
A. Not all of them were not frozen.
Q. Did you always intend to freeze the fish that were put into it?
A. Sometimes used it to put fish in to freeze them, and sometimes put them in to preserve without freezing.
Q. Did you use it for anything besides fish? When I say it, I mean both.
A. No, not as near as I can recollect.
Q. How many fish were ever in these boxes at one time, as nearly as you recollect?
A. Might run from one to six or eight hundred pounds in both boxes.

186 Q. Were all the fish that were in the apparatus, when ice and salt were used for freezing-mixture, frozen?
A. No; didn't allow them to stand there long enough for them to all freeze; didn't generally.
Q. How were the fish put into this apparatus?
A. Put in on shelves.
Q. How did the shelves run, crosswise or lengthwise of the box?
A. Crosswise.
Q. Were these shelves along the whole length of the box?
A. Yes, sir.
Q. In what part of the chamber were the fish that were generally frozen?
A. In the end where the ice and salt were.
Q. Were they ever frozen at the other end?
A. Yes, when they staid in there long enough, as they sometimes did.
Q. How long did it take to freeze fish in all parts of the chamber?
A. Be according to how many you would have in there.

Q. Suppose you had one fish in the end of the chamber, away from the ice and salt, how long did it take to freeze it?

A. That depends how large he is.

Q. In how short a time did you ever know any fish in that end of the chamber frozen?

A. About two hours.

187 Q. How big a fish was this?

A. Small fish; white bass; might probably weigh a pound or pound and a half.

Q. What time of the year was this?

A. When we were getting fish from Sandusky, in the spring of the year; along in April or May.

Q. How often were the fish, all through the chambers, frozen?

A. Don't remember how often; it was seldom. We had them froze sometimes.

Q. What became of this apparatus?

A. I don't know.

Q. How long was it in your store?

A. In '54 and part of '55.

Q. Was it there all the time you were in Columbus; all the time you had the store?

A. Yes; all the time I had the store after it was brought there.

Q. Did you leave it in the store when you left it?

A. I left it with father in the store. I left Columbus two months before he did.

Q. Where did you go, and when?

A. To Sandusky, Ohio, in the fall of '55; in October.

Q. Did you sell the store?

A. I sold it some time before I left there, and then we rented of parties we sold to.

Q. Did you sell the apparatus you have described?

188 A. No, I left it there with father when I moved away; he was using it.

Q. Did your father sell it?

A. I don't know.

Q. To whom did you sell the store, and what did you sell with it?

A. I sold it to some one next door to us; a widow woman. I don't know her name. I don't recollect of selling anything with it.

Q. Have you no means of refreshing your memory as to the name of this widow woman?

A. I don't think I have.

Q. How much did you get for the store?

A. I don't know as I can tell you exactly. I didn't get much over a hundred dollars for it. I got about cost, and it didn't cost much over one hundred and twenty-five dollars. I hired a carpenter to build it. I can't remember his name.

Q. Did you never ask your father, or hear him say, what had become of this box?

A. No, sir.

Q. Did you use at Columbus any other freezing-apparatus besides these two boxes?

A. I did not; I don't know what father did.

Q. Did your father follow you to Sandusky?

A. He came up in the fall, about two months after I did; last of November or first of December, '55, I should judge he came up.

189 Q. Did the boxes go to Sandusky with you or him?

A. No, not to my knowledge.

Q. How long did you and your father stay at Sandusky, and what did you do there?

A. Father kept Verandah Hotel there; I helped him. I was off and on there until I come to Detroit. I was at Cedar Point fishing awhile in 1856.

Q. How large a hotel was the Verandah?

A. Two-story frame building; couldn't tell how many people it would hold exactly. I should judge there was from twenty-five to forty rooms in it; might be more.

Q. Did your father use any of these freezing-apparatus in Sandusky?

A. No, sir; I never saw him use any.

Q. What other business were you and your father engaged in in Sandusky?

A. I was interested with him in a fishery on Cedar Point during the spring of 1856.

Q. When did you and he come to Detroit?

A. The family moved up here, I think, in November, 1856.

Q. How soon after your father got to Detroit did you see the apparatus of which Exhibit B is a model?

A. I saw that in December, 1856.

Q. Who made it?

A. I did.

Q. Under directions from your father?

A. Yes, sir.

190 Q. Please give, as exactly as you can, the dimensions of this box—length, width, height, and size of the tube.

A. I think the box was about five feet square, and about five feet high. The tube, I think, was about ten inches in diameter.

Q. Who made the tube?

A. Father got that made; I don't know who did make it; he brought it to the house while I was making the box.

Q. How long was this apparatus used?

A. We used that apparatus considerable. We used it in the winter of '56 and '57, about three months; then we used it during the summer of '57, or one like it.

Q. Where was this first Detroit box used?

A. On Adams avenue, west, at my house—don't know the number; at father's house.

Q. How long was it there?

A. Till we moved on to Jefferson avenue, in the Chapiton House.

Q. Did you take this box with you?

A. Yes, sir.

Q. How long did you use it at the Chapiton House?

A. We used it at the two places about three months.

Q. What then became of it?

A. We had it then on Congress street, between Brush and Randolph streets; don't know the number. We had it there during the summer of 1857, and, I think, up to the spring of 1858; then I tore it to pieces. We built up another one similar to it in 1864.

191 Q. What was your father's business while you lived on Adams avenue?

A. Buying and selling fish.

Q. And afterwards, in Detroit?

A. Buying and selling fish and produce.

Q. What made you tear it to pieces?

A. 'Cause we had no further use for it then, I suppose.

Q. How many fish were ever preserved, after freezing, in this apparatus at one time?

A. About five or six hundred pounds.

Q. For how long at any one time?

A. At one time we had them in three months, about.

Q. What became of these fish?

A. My brother and I sold them around to the hotels here, and to folks on the market.

Q. Please give the names of the hotels, of their proprietors, and the names of the parties to whom you sold.

A. The Railroad Hotel, of which I think Antisdel was proprietor; Michigan Exchange, and Russell House. I sold to the stewards of the hotels; I cannot give their names. I do not remember the names of any particular persons to whom we sold on the market.

Q. What year was this, and what season of the year?

A. During the winter of 1857, commencing in January, 1857, and sold about three months, until we sold out.

Q. After this box was destroyed, how soon did you have another one like it?

A. In the fall of 1864.

192 Q. Up to the time when you destroyed this box, in the spring of 1858, it was kept, was it not, at the places you have mentioned, on Adams avenue, Jefferson avenue, and Congress street?

A. Yes, sir.

Q. When did you get a place of business on Barnum's dock?

A. I think some time in the spring of 1857; late in the spring; wasn't there steady.

Q. How long did you remain there, and where did you move to?

A. I don't know how long we was there; we moved from there into Catlins & Irwin's—another dock, I think, above Barnum's; can't fix the time.

Q. How long did you stay there, about?

A. Can't tell exactly; can't tell about how long; no use for me to guess at it.

Q. Between the time when this first box was destroyed and 1864 did you have any freezing-apparatus at all?

A. Yes, sir.

Q. What kind?

A. Like model, Exhibit D.

Q. Where did you have the apparatus like Exhibit D?

A. In the warehouse on Barnum's dock—J. W. Barnum's dock.

Q. How long was it there; from what time to what time?

193 A. I think it was there in the spring and summer of 1857; I don't know how long it was there altogether.

Q. How long did you run it there?

A. I used it there about two months.

Q. What then became of it?

A. It was stored away some place; then we had it in 1859 or 1860.

Q. Where was it stored?

A. Father had it away some place; don't know where he did have it stored. I think he used it at the house to freeze in, but that is a mere impression.

Q. Please state in what building, what part of the building, and on what part of the dock this apparatus stood in the spring and summer of 1857.

A. I think it was on the northeast side of the building; it was on the left-hand side of the building as you went into the door off the street.

Q. What part of the dock was the building on?

(Last question is withdrawn.)

Q. This dock was at the foot of Second street; the west line of the warehouse on this dock was on the east line of Second street, was it not?

A. Yes.

Q. Then in front of the warehouse was a dock?

A. Yes.

Q. What kind of a warehouse was it, frame or brick?

A. Brick, I think; maybe of wood.

194 Q. So that you say that the west wall of the warehouse on Second street was brick?

A. No; that was frame.

Q. Then the east wall was a brick one, you mean?

A. No; the whole building was frame.

Q. Who else occupied that warehouse besides Barnum, on the dock?

A. I don't know; I didn't have any dealings with them.

Q. Did any one?

A. I didn't know of any one but Barnum.

Q. Who did you rent from?

A. We didn't rent the building at all; we merely had storing-privileges, and paid for whatever we had of Barnum.

Q. You contracted with Barnum for the storing-privileges?

A. Yes, sir.

Q. At what rate did you pay him for those privileges?

A. I don't recollect the rate.

Q. What did you store there?

A. Well, I don't know that I could enumerate everything; we stored considerable stuff there.

Q. State what you can remember that you stored there; everything that you can remember.

A. We had a refrigerator-box there, dry-goods boxes, fish. We done a shipping business over his dock afterwards.

195 Q. What did these boxes contain?

A. The refrigerator contained fish; I don't know what the others did contain.

Q. What did you ship over the dock?

A. Produce, and some fish.

Q. Where did you get the fish that you had there during the spring and summer of '57?

A. They were caught at Monroe, some of them, some on the lake shore, and some at Lake Superior.

Q. Were all these fish kept in the refrigerator?

A. No, sir.

Q. Where were they kept?

A. They would come in barrels, and we would sell them off the same way; the object was not to keep fish long, but to sell them as soon as possible.

Q. Was this refrigerator kept in a room in this warehouse, or right in the open main warehouse?

A. Kept in the open warehouse, in the main room of this frame warehouse.

Q. What did you say that refrigerator was—of what model?

A. Exhibit D.

Q. What time did you go from there to the Catlin & Irwin warehouse—year?

A. Don't remember the year.

Q. Were you in business anywhere else on the dock at any time?

A. Yes, sir; at De Garmo Jones' and Keith & Carter's.

196 Q. Which place did you go to first, Jones' or Keith & Carter's?

A. De Garmo Jones'.

Q. That was a dock owned by De Garmo Jones, you mean?

A. I couldn't tell.

Q. What time did you go there?

A. I don't know what time we went there; I recollect of being there in 1859–'60.

Q. When did you go to Keith & Carter's dock?

A. I couldn't tell you that, couldn't tell the year; I can easily get it.

Q. Will you get it?

A. I will, if I can find it.

Q. Have you any memoranda or data by which you can fix the time that you went to any of these other docks other than Keith & Carter's?

A. I don't think I have; I can look and see.

(The further examination is here adjourned to Friday morning, April 12th, 1872, at 9 o'clock a. m., by consent of counsel for complainant and defendants.)

FRIDAY, *April* 12, 1872, 9 o'clock a. m.—Mr. Holmes appears for complainant, Mr. Kent appears for defendants.

Cross-examination of Samuel H. Davis resumed:

197 Q. Have you since the adjournment yesterday searched for the memoranda inquired for in the last interrogatory, to enable you to fix the time when you went to any of the docks in Detroit other than Keith & Carter's, and have you found them?

A. I can tell you what I did find. I found on Keith's dock, from Mr. Keith himself, that we were on his dock in '59 and '60; we were on De Garmo Jones' dock before we went to Keith's, in the spring of '59. I don't know how long we were there.

Q. Then you went to Barnum's warehouse in 1857, and from there to Catlin & Irwin's dock, and from there to De Garmo Jones' dock, where you were in the spring of 1859, and from there to Keith's dock, where you were parts of the years 1859 and 1860, were you not?

A. We were not at any of these docks steady. I could not tell how much of the time we was at them. That was the years we was there.

Q. And is that the nearest that you can come to the exact time when you were at these various places?

A. Yes, sir; that is as near as I can get at it.

Q. You say that you hired the Keith dock of Keith himself, or hired privileges on that dock of Keith himself. Of whom did you hire privileges on each of the other docks? Give the names.

A. Father made those arrangements; I did not do it myself.

Q. Can you state the names of your landlords in these various places?

A. Yes.

198 Q. Please do so.

A. Barnum, (J. W. Barnum,) De Garmo Jones, and Keith. I don't know Keith's first name. Keith, and Keith & Carter, and Catlin & Irwin; can't give their initials.

Q. Did you have freezer like Exhibit D at all these places; if not, at which of them?

A. At Barnum's and at Keith & Carter's, on De Garmo Jones' dock.
Q. Not at any of the other places?
A. No, sir.
Q. How long at Barnum's?
A. I think it was there about six weeks.
Q. And how long on the De Garmo Jones wharf?
A. I think we had it there until we went away; couldn't tell how long we were on there.
Q. A week?
A. I think we had it there about three or four months.
Q. In what building and what part of the building did you have it on De Darmo Jones' wharf?
A. We had it in a little fish-house we had on the dock?
Q. What part of the dock was the fish-house?
A. On the east side, next the river; it was a little shed made out of rough boards, which we tore down when we left. It was just a temporary concern.
Q. What did you do with the freezer when you tore down the fish-house?
199 A. I think it was taken to our dwelling-house.
Q. Did you have more than one freezer like D?
A. No, sir; not at that time.
Q. Did you have any other freezer at all, whether like Exhibit D or not, at this same time?
A. We had no freezer at the docks, except at De Garmo Jones' and and Barnum's docks. We had one at the dwelling-house which was like Exhibit B.
Q. Did you have it at the house all the time you were on the docks?
A. No, sir.
Q. On the docks, then, you had no freezer except the one like Exhibit D. Am I right?
A. Yes, sir, to the best of my knowledge, unless my father had one there when I was away. I was away four or five weeks at a time.
Q. What season of the year did you have this box like Exhibit D on the docks?
A. In the spring and summer.
Q. Who made Exhibit D; the box like it, I mean?
A. A man named Jarradd. He lives in the city, and will be here.
Q. Were all these apparatuses of which you have spoken successful in their operation for the purpose for which they were designed?
A. Successful in freezing.
Q. And in preserving?
A. Preserving in a frozen state.
200 Q. In an affidavit signed by you on the 6th of November, 1871, I find this statement: "The refrigerating apparatus to which I have referred above was in use by said Davis at his place of business in Columbus, Ohio, and during and after the year 1856 at his place of business in Detroit, Michigan, and was daily opened in the presence of his customers for fish. In addition to the device which I have already described for the purpose of freezing fish, and which I identify as shown in model marked Exhibit B, said Davis employed other devices such as shown in Exhibits A and C, et cetera." Did you so swear?
A. Yes, sir.
Q. I also find in that affidavit these words: "From and including the year 1852, and up to the early part of the year 1868, said William Davis was engaged in experimenting with various forms and constructions of

proper refrigerating apparatus for the purpose of his business." Did you so swear?

A. I did, if that is it. Yes, I did.

Q. When the apparatus like Exhibits A, B, and D were in use, was the same proportion of salt to ice used in the freezing mixture always?

A. I couldn't tell you; we never measured it; we guessed at the salt.

Q. When the fish was frozen in the box like Exhibit A, in Columbus, in about two hours, as you have stated, were there any other fish in the preserving chamber; if so, how many?

A. Only the one.

201 Q. When you left the De Garmo Jones dock, what become of the box like Exhibit D?

A. I think it went to the house.

Q. How long did it stay there and what eventually became of it?

A. I don't know how long it was at the house; I don't know what did become of it after that.

Q. When and where did you last see it?

A. I couldn't tell when I last saw it; I last saw it at the dock; I might have seen it at the house; I don't recollect seeing it at the house; there was nothing to call my attention to it; we built a larger one of the same kind in 1861, in the fall of 1861.

Q. Who built this larger one and where was it used?

A. I built it on Lafayette street, west, old number 267; it was used right there; we done our fish business there.

Q. What became of this one?

A. I tore the inside out and used it for an ice-house, then we tore it down.

Q. When did you tear the inside out?

A. I think the inside was in about a year.

Q. Please give the dimensions of first box like Exhibit D?

A. I think it was about four feet long, three feet wide and three high; I guess at it; I never measured it; I think the part where the freezing-mixture was, occupied about a foot or ten inches; never measured.

202 Q. In the same affidavit from which I have quoted, I find these words: "This device which I have thus described (like Exhibit B) was used, constructed substantially as described, for many years by said William Davis, from the year 1852 to 1866 or 1867, when said Davis changed the construction somewhat, for the purpose of producing in the air-tight box a constant circulation of air within the box when it was employed either as a freezing or preserving chamber." Did you so swear?

A. Yes, sir.

Q. In using the apparatus like Exhibit B, you said, in your direct testimony, that you could freeze in it about a hundred pounds at a time, and that at one time you had in it, for preservation, five or six hundred pounds of fish. I suppose that these five or six hundred pounds were frozen a hundred pounds at the time and then laid in the chamber for preservation. Am I right?

A. Yes, sir, you are right.

Q. Where these five or six hundred pounds laid on the floor of the chamber; if not, where were they put?

A. On the floor after freezing.

Q. Were they equally distributed over the floor, or put in any particular part of the chamber?

A. They were placed all over the bottom, piled up.

Q. And preserved for three months?

A. Yes, sir.

Q. Can you give the names of any men who saw any one of the apparatus of which you have spoken, before 1859? if so, please do so.

203 A. Yes; Col. Thomas S. Sprague, D. W. Davis, my brother, N. B. Rowley, Albert Harryman, Peter Jarradd, Simon Fought, W. W. Riley, and others; I don't remember their names now.

Q. Which of the apparatus did these men see?

A. Some were in Columbus and some were in Detroit.

Q. Didn't you say little while ago that you couldn't name the persons who saw the Columbus apparatus?

A. I don't think I did; I might.

Q. After you destroyed the second apparatus, like Exhibit D, when did you next have another refrigerating apparatus, and where?

A. In 1864, at No. 1, Russel House building.

Q. What kind of an apparatus was this?

A. Exhibit B.

Q. Please give its dimensions.

A. I think it was about five feet high, about six feet square; it was like Exhibit B, except it had four pipes instead of one.

Q. How long did you use that, and what became of it?

A. Used that about two years, and then tore it to pieces.

Q. What one did you have next?

A. Had one like Exhibit D, only the ice was in the centre of it; the partition for the ice went through the centre of the box, with preserving-chamber on both sides; the box was about seven (7) feet long, about four feet high, and about four feet wide.

204 Q. During the time from '52 to '59, did your father have any ordinary ice-boxes, such as are used by fishermen for keeping fish in warm weather?

A. We had some to keep ice in; there might have been fish in them sometimes; I can't recollect whether there was fish in them or not.

Q. Where is Mr. Barnum now?

A. Don't know.

Q. Left the city some years since, hasn't he?

A. I have heard he has; don't know; haven't seen him.

Q. Who else occupied that warehouse, or any part of it, with Mr. Barnum at the time you were there?

A. I don't remember; had no dealings with them.

Q. Did any one thus occupy it?

A. I don't know that, either.

Q. Do you know Mr. James Collins?

A. No, sir; I don't know as I ever saw him; have heard of him.

Q. Do you know Mr. J. C. Hatch, baker?

A. I am not personally acquainted with him.

Q. Did he occupy any portion of that warehouse at that time?

A. I don't know?

Q. Do you know Mr. George C. Jones?

A. I have known him about a year.

205 Q. Did he occupy any portion of that warehouse at this time?

A. I don't know as he did.

Q. What time of the year did you leave the Barnum dock?

A. I don't know; father left there while I was away.

Q. What time in the year did you go away?

A. I went away in September, 1857, and was gone about six weeks or two months.

Q. Where did you find him when you came back?

A. I think at Catlin & Irwin's.

Q. Is that above or below the Barnum dock?
A. Above, in the same block.
Q. What time in the year did you leave Catlin & Irwin's?
A. I don't remember; don't remember the year.
Q. Where did you next go?
A. We was on De Garmo Jones' dock.
Q. What year did you go there?
A. I don't know; we left there in 1859.
Q. Is that dock above or below the Catlin & Irwin dock?
A. It is above; couldn't tell how far or how many blocks; it is not in the same block; it is at the foot of Shelby street.

Q. From Second to Shelby street is how many streets? First
206 street above the Barnum warehouse is First street, the next Cass, and the next is Wayne, and the next Shelby, being four blocks?
A. Yes, sir.
Q. De Garmo Jones is dead, isn't he?
A. I have heard so; yes, he is dead.
Q. Did any one occupy that dock with De Garmo Jones at the time you were there?
A. I don't know.
Q. You know he occupied it?
A. Yes, sir.
Q. Who were the members of your father's family from 1852 to 1868?
A. Himself, his wife and children; William Davis, now dead; Mary A. Davis, my mother, still living; myself; David W. Davis; Elizabeth Davis, now Mrs. Thomas Podgett, now living; Amelia A. Davis, now Mrs. Royl; Emma Davis, now Mrs. Worman; all living except father; there is one more, Will. C. Davis, my brother.
Q. Can you name any men employed by your father, besides yourself, at Columbus, at Northwood, or at Detroit? If so, please do it.
A. I cannot at Columbus or Northwood; at Detroit I can; they are Antoine Pelky, Peter Jarriat, John Wilds, Joe Harrison, Pete Gabris, and a number more that I can't name them.
Q. Are the men you have named living, and where?
A. I don't know about them all; a few of them are living; Wilds and Jarriat are living here in town; the others, I don't know where
207 they are.

Q. Were the large apparatus like Exhibit B used in the same way as the first one, for freezing and preserving fish?
A. Yes; I don't think there was any change.
Q. Will you produce, or cause to be produced, the register of the house kept by your father at Northwood?
A. I will.
Q. At Northwood, Columbus, and Sandusky, will you produce the registers from the hotels?
A. I will, the one from Northwood; I have none of the others.

Redirect by Mr. Kent:

Q. Your attention has been called to an affidavit which you made on the motion for preliminary injunction in this case. Who prepared that affidavit?
A. Col. Sprague.
Q. Under your direction?
A. I first talked with him and gave him points.

Q. What mistake occurred in the affidavit, or that part of it about which you were asked?

(Objected to for form and substance and as leading.)

A. He got the ice and salt in what I call the preserving-chamber, instead of the outside of it.

Q. Did you notice that mistake when the affidavit was read over to you before you swore to it?

208 (Objected to for same reasons.)

A. No, sir.

Q. How much time had Col. Sprague to prepare the affidavit?

(Objected to for the same reasons.)

A. But a very short time.

Q. What is about the cost of making one of the freezers such as were made by your father at Northwood in 1851 or 1852?

A. About five or six dollars.

Q. What of one such as was used by you at Columbus?

A. About the same.

Q. What was the cost of making the apparatus used in Detroit in 1856 and 1857?

A. I should judge about ten or twelve dollars.

Q. How extensively were you engaged in the fish business in Detroit in 1856, 1857, and 1858, you and your father?

A. Very light.

Q. Was the fish trade here at that time anything like what it is now?

A. No, sir.

Q. Why did you not at that time use your apparatus more extensively for the freezing and preserving of fish?

(Objected to for form and substance.)

209 A. Because it didn't pay to freeze them then as it does now; they were almost as cheap in the winter as in the fall.

Further cross-examination:

Q. Did you ever see ice-cream frozen in a freezer without revolving?

A. Yes, sir.

Q. What was its condition when thus frozen?

A. It will be as good as that which revolves, provided that you take a knife and cut it away from the freezer as it freezes, and then beat it up with a stick or paddle to make it smooth; I have so made it.

Q. Will it be precisely the same in all respects?

A. It will, in my opinion.

SAMUEL H. DAVIS.

Subscribed and sworn to before me this 12th day of September, 1872.

DON. M. DICKINSON,
Examiner.

APRIL 12, 1872—2.15 P. M.

Mr. Holmes for the complainant, Mr. Kent for the defendants, present.

JOHN W. WILDS, a witness produced on behalf of defendants, being duly sworn and examined, testified as follows:

210 Q. Where do you live?

A. Corner of Porter and Seventh streets, Detroit.

Q. How long have you resided in Detroit?

A. Twenty years.

Q. What is your age?
A. 35.
Q. What is your business?
A. Sailing and fishing.
Q. Did you know William Davis, when living?
A. Yes, sir.
Q. You mean the father of Samuel H. and D. W. Davis?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. When he was fishing on Cedar Point in 1855.
Q. Were you ever in his employment?
A. Yes, sir.
Q. When first?
A. 1857.
Q. What was his business there?
A. He was in the fish business.
Q. Where did he carry on that business at that time?
A. Congress street, Detroit.
Q. What was he doing with fish at that time?
A. He was shipping, selling, and freezing fish.
211 Q. Was the place where he carried on business on Congress street the place of his residence?
A. Yes, sir.
Q. Did you see at that time the method by which he froze fish?
A. Yes, sir.
Q. Did you assist in the work of freezing these fish?
A. Yes, sir.
Q. Describe the method by which the fish were frozen.
A. He froze them with ice and salt.
Q. What kind of an apparatus, if any, did he use?
A. He had a square box, five feet high, four feet square, a receptacle through the centre; double wall filled with sawdust about eight inches thick, double door on the side. The salt and ice was put in the receptacle.
Q. Where were the articles or fish to be frozen put?
A. Inside the box, hung on hooks around the receptacle.
Q. There are four boxes called exhibits before you, Exhibits A, B, C, and D; which, if either of the four, is like the box which you have been describing?
A. Exhibit D is like it.
Q. How, in the box which you have been describing, did the drip pass off?
A. It went off through a pipe attached to the receptacle.
Q. Of what was the central receptacle made?
212 A. Tin.
Q. Was there any communication between this central receptacle and the place where the fish were put?
A. No, sir.
Q. How was the top of this central receptacle closed?
A. With a wooden plug.
Q. How many fish did you freeze at a time in this box you have described?
A. From twenty-five to thirty pounds.
Q. How, when frozen, were they preserved, if at all?
A. Put in the bottom of the box.

Q. How large a number did you ever know preserved in this manner at one time?
A. 500 pounds.
Q, Did that amount fill the box?
A. Not quite.
Q. Did you observe this process of freezing and preserving many times?
A. Quite a number of times.
Q. For how long a time were you at work for Mr. Davis in 1857?
A. Three months.
Q. When did this period begin and when did it end?
A. Began in August and ended in November.
Q. What was done with the fish frozen in this box?
A. Sold; shipped away, and sold here in the city.
213 Q. Where was this box placed?
A. In the barn.
Q. Did you ever work for Mr. Davis after this period?
A. Yes.
Q. At what time?
A. In 1859, 1860, 1870.
Q. Between 1860 and 1870?
A. In 1863, 1864, and 1865.
Q. What did you do for him in these years?
A. Fished for him, and worked in the store some of the time.
Q. Do you know whether William Davis is dead?
A. Yes, he is dead; I worked for him when he died.
Q. Have you been to work for any of the Davis family since 1870?
A. Yes, sir.
Q. Are you at work for them now?
A. No, sir.
Q. How long since you ceased to work for any of them?
A. A year ago last summer.

Cross-examined by Mr. Holmes:

Q. What were you doing before you went to work for Mr. Davis?
A. Sailing.
Q. For whom and where?
214 A. From here to Sandusky, for Capt. Buzzard.
Q. When did you begin to sail for Capt. Buzzard?
A. In 1853.
Q. And when did you cease to sail for him?
A. 1855.
Q. What was the name of the vessel you sailed in?
A. Steamboat United.
Q. Did you go to work for Mr. Davis as soon as you left the boat?
A. No, sir.
Q. What did you do?
A. I was working in a farm-house.
Q. How long did you work there?
A. About twelve months.
Q. What did you do then?
A. Came down to Detroit.
Q. What did you do when you came to Detroit?
A. Didn't do anything for three months.
Q. What then?
A. Well, I went to work on a wood-scow.

Q. What next?
A. The next time I went to work, I worked for Mr. Davis.
Q. How long did you work on the wood-scow?
A. One month.
215 Q. What time of year did you come to Detroit from the farm?
A. In the spring.
Q. How do you know that you began to sail for Capt. Buzzard in 1853?
A. Because my brother was mate on the boat.
Q. How does that enable you to tell that it was in 1853?
A. Well, he told me; I asked him what time I went with him my first sailing.
Q. When did he tell you so?
A. A year ago.
Q. And that is the only way you know, is it?
A. Yes, sir; I know another way.
Q. What other way?
A. Mother has told me.
Q. When did your mother tell you?
A. The same time my brother told me, a year ago.
Q. Is there any other way that you know?
A. I have earned my own living ever since I was sixteen years old.
Q. What made you ask your mother and your brother?
A. Well, sir, 'cause we were talking about seeing how long I was sailing, and there was a year difference between us. They said I went at 13, and I said I went away from home at 14.
216 Q. When did they tell you this?
A. A year ago this spring.
Q. Where did you go when you first went away?
A. I went to New Baltimore.
Q. How do you know that it was in '57 that you went to work for Mr. Davis?
A. Well, it was the last year I sailed with Capt. Buzzard.
Q. When you first went to work for Mr. Davis was this apparatus that you have described there?
A. Yes, sir.
Q. Did you have anything to do with the apparatus particularly?
A. Yes, sir.
Q. I believe you have said the fish were put, to be frozen, around the receptacle which held the freezing-mixture; have you not?
A. Yes, sir.
Q. Do you mean close up to the receptacle?
A. Yes; not so they would come in contact.
Q. Why were they put there?
A. To freeze, sir.
Q. I mean close to the receptacle.
A. To freeze.
Q. You have said that in that apparatus Davis could freeze twenty-five or thirty pounds at a time; why couldn't he freeze more?
217 A. He didn't want to freeze any more.
Q. How many fish did you ever see preserved in this apparatus and frozen at any one time?
A. Five hundred pounds.
Q. How were these five hundred pounds frozen; in succession, by lots?
A. Yes, sir.
Q. When did you last see this apparatus?

A. In the fall of 1857, when I left him.
Q. Did he have more than one apparatus of this kind at this time?
A. Only that one that he was using of this kind.
Q. Did he have one of any kind?
A. He had some boxes, but I don't know what they was.
Q. Do you mean dry-goods boxes?
A. I do not know whether they were dry-goods boxes, or what kind. They was boxes; that is all I know about them.
Q. Was there any fish in them?
A. No, sir.
Q. Where were these boxes?
A. In the back yard, in the open air.
Q. Did you ever see any ice put into them?
A. No, sir.
Q. Were they simply wooden boxes?
A. Yes, sir.
218 Q. And that's all you know about them, is it?
A. Yes, sir.
Q. You never saw them used for any purpose whatever?
A. No, sir.
Q. How many were there?
A. I didn't count them; don't know.
Q. More than one?
A. Yes, I guess there was; I don't know.
Q. More than three?
A. Well, I don't know; might have been half a dozen there; I didn't count them.
Q. Describe them as near as you can.
A. They was wooden boxes—square boxes.
Q. What made you leave Mr. Davis' employ?
A. He had nothing more for me to do for him.
Q. State, as nearly as you can, the exact date that you left Mr. Davis.
A. In December, some time, 1857; don't exactly remember the day.
Q. What did you do then?
A. Went home.
Q. What did you do after you left home again?
A. Went sailing.
Q. How long were you sailing? By whom were you employed?
219 A. By my brother in 1858; in the spring of 1858.
Q. Please give the exact date when you left Mr. Davis; I mean when you commenced work for Mr. Davis.
A. I commenced work in October, 1857, I think; I don't know the date exactly.
Q. What did you do after you left off sailing for your brother?
A. Went home.
Q. When did you go home?
A. Fourth of July, 1858.
Q. Where did you go after you left home again?
A. Came down to Detroit.
Q. What did you do there?
A. Went to work for "the Sisters."
Q. How long were you at work there?
A. About six weeks.
Q. When did you go to work for them?
A. In 1858, in the summer some time; I don't remember the date.

Q. How long were you at home before you came to Detroit this time to work for the Sisters?

A. Two or three weeks; may be longer.

Q. When did you next go to work for Mr. Davis?

A. In 1859, sir.

Q. In 1857 what was Mr. Davis' business?

A. Freezing fish and dealing in fish.

220 Q. How large a business did he carry?

A. I don't remember how many barrels he shipped a day. Some days he would ship two or three, some days more; more or less every day.

Q. His business, then, was pretty large, was it not?

A. Well, pretty fair.

Q. Where did he ship to?

A. Cincinnati, Columbus; that is all the places I can remember.

Q. To Sandusky at all?

A. He may have shipped there; I don't remember.

Q. Do you remember the names of the parties to whom he shipped?

A. No, sir.

Q. You say some of these five hundred pounds of fish that were in the apparatus at one time were shipped away, do you not?

A. Yes, sir.

Q. Where to?

A. Don't remember; they were shipped away.

Q. When they were in the apparatus were they spread all over the floor?

A. They was tiered up.

Q. In what part of the apparatus?

A. Inside the box.

Q. What part of the inside of the box?

A. All around inside the box, tiered up from the floor.

221 Q. What do you mean by tiered up?

A. Tiered up the same as you pile cord-wood.

Q. Did they cover the whole bottom of the chamber, from centre to outside?

A. Yes, sir,

Q. How long were they kept there?

A. About two weeks—ten days to two weeks; don't know exactly the very day.

Q. Were they all frozen when they came out?

A. Yes, sir.

Q. All equally frozen?

A. Yes, sir.

Q. Had any of them thawed or softened at all?

A. No, sir.

Q. Did you know of more than this one box you have spoken of that was used as a refrigerator in 1857?

A. No, sir; I did not.

Q. Where did you work for Davis in 1859?

A. Up in Lake St. Clair.

Q. Doing what?

A. Fishing.

Q. What time?

A. In the winter of 1859.

Q. Who tended to the shipping of the fish in 1857?

A. William Davis; that is, he marked them.

Q. What other business did he do besides fish in 1857?

222 A. Nothing else, to my knowledge.

Q. I understood you to say that he shipped about five hundred pounds every two weeks; am I correct?

A. No, sir; he used to ship—I don't know how many he did ship, every two weeks.

Q. Did he ship frozen fish or unfrozen?

A. He shipped unfrozen, and did ship frozen fish.

Q. How and where did he ship frozen fish in 1857?

A. He shipped them in barrels to Cincinnati. I am not positive who got them, but I think he shipped them to Keith.

Q. How did he keep them frozen in the barrels in which they were shipped?

A. They was frozen when they left here; don't know whether they was frozen when they got there or not.

Q. Was there any ice in the barrels?

A. No, sir; not when frozen fish were shipped.

Q. About how many pounds would a barrel hold?

A. When frozen, one hundred and seventy-five; two hundred and fifty unfrozen.

Q. About how often was the refrigerator emptied of the frozen fish?

A. Sometimes we would empty it every day or two.

Q. How often was the refrigerating-mixture renewed in this?

A. Do you mean circulation of air? (It is explained that the question refers to the freezing-mixture.) Twice a day.

223 Q. You said something in answer to the last question about circulation of air. What do you mean by that?

A. I can show you. The air is inside the box; there is always warm air and cool air in the box, and this cool air presses the warm air around the receptacle.

Redirect by Mr. Kent:

Q. In speaking of the circulation of air, do you speak of anything you saw in the box used in 1857, of which Exhibit B is a model?

A. Yes, sir.

Q. You have already testified, if I understand you, that the box you saw used in 1857, with the exception of the walls, was like Exhibit B?

A. Yes, sir.

Q. Now, what circulation of air was there in that? (Showing witness Exhibit B.)

A. What I mean in circulation of air is going around this tube, (tin tube in model):

Q. Is that all you mean by circulation of air?

A. That's all, sir.

Recross by Mr. Holmes:

Q. Who ever said anything to you about circulation of air in this apparatus like Exhibit B?

A. William Davis.

Q. What did he say about it?

A. He told me that when he put in fish that there is always more or less hot air gets in the box, and takes some time to get the box cool enough to freeze.

224 Q. Is that all?

A. That's all, sir.

JOHN W. WILDS.

Subscribed and sworn to before me, this 12th day of April, 1872.

DON. M. DICKINSON, *Examiner.*

Adjourned to April 13th, 1872, at 9 o'clock a. m.

APRIL 13TH, 1872.—Testimony for defendants continued. Mr. Holmes and Mr. Prentice appear for complainant; Mr. Kent appears for defendants.

NORTON B. ROWLEY, a witness produced on behalf of the defendants, being duly sworn and examined, testified as follows:

Q. What is your age?
A. Fifty-eight.
Q. Where do you reside?
A. Detroit; have lived here twenty years; my business is dealing in scales; am located on Woodbridge street, corner of Bates street.
Q. Do you know Samuel H. Davis and D. W. Davis, and how long have you known them?
225 A. I know them; have known them some fifteen or sixteen years; may be longer.
Q. Did you know William Davis, their father, in his lifetime?
A. Yes, sir.
Q. When did you first know him?
A. In the summer of 1856 and 1857; first season was fifty-six.
Q. Did you ever see him have frozen fish in the summer time?
A. Yes, sir.
Q. Can you tell when?
A. In the summer of 1857.
Q. Can you tell in what month?
A. In July, I think, as near as I can get at it; it was warm weather.
Q. Where was it that you saw these fish at that time?
A. On De Garmo Jones' dock.
Q. Whereabouts is this?
A. At the foot of Wayne street; De Garmo Jones had two docks.
Q. Was it Wayne, or Shelby, or Griswold streets?
A. Go down Griswold street and turn to your right, and you come to it.
(Objected to by Mr. Holmes, witness having already stated where dock was.)
Q. Can you recall the day of the week in which you saw these frozen fish?
226 A. Yes, sir; it was on Sunday.
Q. How did you come to be on that dock on that day?
A. I was down waiting for the Saginaw boat to come in, which was due at ten o'clock that day; I was expecting an engine to come on that boat for the shop.
Q. Did you see Mr. William Davis there?
A. Yes, sir.
Q. Whereabouts?
A. On the dock where his fish-box was.
Q. What did he show you then and there?
A. He went to the box and opened it, and showed me some fish he had in it and a cup of milk.
Q. State the condition of the fish.
A. The fish was frozen stiff.
Q. Did you take hold of them?
A. I did.
Q. Did you look inside the box?
A. I did.
Q. How many fish did you see?

A. I should think about a hundred pounds; the bottom of the box was covered.

Q. Can you describe this box?

A. Yes, I think so; the box was about four or six feet long; there were two lids; an upper lid which opened the whole bigness of the box, and a lower lid which didn't quite.

227 Q. Did it resemble Exhibit D?

(Objected to as leading.)

A. It did.

Q. Anything said then as to how the fish were frozen—by Mr. Davis?

A. Yes; I asked him where the ice and material for freezing the fish was, as there was none in sight; he rapped on the end of the box inside, and said, "It's in here."

Q. What was further said, if anything?

A. That he sent those fish, or was going to send them, to Cincinnati.

Q. Describe the condition of the milk.

A. It was frozen so that I couldn't break it with the end of my finger.

Q. Where was the milk when you first saw it?

A. In the box.

Q. How was it—on the bottom?

A. Yes, sir; on the bottom of the box.

Q. Can you tell anything which causes you to recollect that this was in 1857?

A. Yes, it was after the year Fremont run for President, and it was just previous to the fall my family came here; they came some time in November.

Cross-examined by Mr. Holmes:

Q. Where was this box that you speak of—I mean what part of the dock?

228 A. On De Garmo Jones' dock; the east end of the old De Garmo Jones warehouse.

Q. Was it in the warehouse?

A. No, sir; it was out in the sun, next to the river; out on the wharf, against the side of the warehouse.

Q. Was that where Davis' place of business was?

A. No, sir; it was not.

Q. Where was his place of business?

A. Below, at Barnum's dock.

Q. Have you any other reasons for thinking that it was in 1857 than those you have stated?

A. I don't know as I have any other reason for it.

Q. How were the fish to be shipped to Cincinnati—do you know?

A. By boat to Sandusky.

Q. Do you know how they were to be shipped; I mean in what manner?

A. In boxes of this kind I shipped them, says he.

Q. Do you know to whom they were shipped?

A. I do not.

Q. Have you ever seen any other apparatus for freezing fish, not of Mr. Davis', but any other?

A. I don't know that I ever have; that is, no patented thing; I have seen common ice-boxes, where you pack the fish and ice all together.

Q. Were the fish frozen in these common ice-boxes, as you call them?

229 A. Yes, they were frozen sufficient enough to carry them.

Q. Did you ever see any other ice-box of Mr. Davis'?

A. I have seen others made in several different ways; I never examined them as thoroughly as I did that.

Q. When was this event recalled to your memory first?

A. Some time this spring—March or April.

Q. Up to that time had anything occurred to call it to mind?

(Question withdrawn.)

Q. Do you know how large Mr. Davis' business was at this time?

A. I do not.

Redirect by Mr. Kent:

Q. You made an affidavit in this same case, did you not, in December last?

A. Yes, sir.

Q. When you spoke of your attention having been first called to this in March or April of this year, what did you mean?

A. I meant when I made that affidavit, or a day or two before that.

Q. Who recalled your attention to the facts as to which you have testified first before you made the affidavit?

230 A. Mr. Davis—Samuel H. Davis.

Recross-examination by Mr. Holmes:

Q. Is the affidavit now read to you the one to which you swore? (An instrument in writing is here read to witness, in words and figures as follows:)

"Norton B. Rowley, being duly sworn, deposes and says, that he was acquainted with William Davis during his lifetime; I first knew him in 1856, and I was at his place of business in 1857, in the summer, and the said William Davis showed me a quantity of frozen fish, about two hundred pounds; they were frozen stiff; the said Davis told me that he shipped the frozen fish to Cincinnati, Ohio; the said William Davis then took out of a box, standing on the dock in the open air and in the sunshine, a pint of milk, which was frozen solid; this was on the Jones dock, in the city of Detroit, Michigan; I have resided in the city of Detroit for the last twenty years."

A. Yes, sir.

Redirect by Mr. Kent:

Q. In this affidavit you say that you were at Mr. Davis' place of business, and you now say that his place of business was not on De Garmo Jones' dock, but below, on J. W. Barnum's. How do you reconcile the two, or is there a mistake?

(Objected to by Mr. Holmes for form and substance and as incompetent.)

231 A. You lawyers have got mixed someway, and I will tell you why. This gentleman, (Mr. Holmes,) on cross-examination, asked me if I knew where Mr. Davis' previous place of business was; I said it was at Barnum's.

NORTON B. ROWLEY.

Subscribed and sworn to before me this 13th day of April, 1872.

DON. M. DICKINSON, *Examiner.*

Testimony for defendants continued:

PETER JARRIAT, a witness produced on behalf of defendants, being duly sworn and examined, testified as follows:

Q. What is your age?

A. Fifty-two.
Q. What is your business?
A. Carpenter and joiner; my first business was wagon and carriage builder.
Q. Where do you reside?
A. Adams avenue, in Detroit.
Q. How long have you lived in Detroit?
A. I arrived here in forty; stayed here two years; then went to Mount Clemens, and moved back here in 1853, and have lived here ever since.
232 Q. Are you acquainted with David W. Davis and Samuel Davis?
A. Yes, sir.
Q. Were you acquainted with their father, William Davis, in his lifetime?
A. Yes, sir.
Q. When did you first get acquainted with William Davis?
A. In the fall of 1856.
Q. Were you employed by him then?
A. I did a little job for him that fall.
Q. What was it?
A. Made a capstan for him to wind rope on.
Q. When did you next do anything, if at all, for him?
A. In the next spring following.
Q. What did you do then for him?
A. Made him a box.
Q. Describe the box.
A. A box about four feet long, three feet wide, and high in proportion—two feet ten, or something like that; dimensions were given by him; I was working according to his order.
Q. Go on with the rest of your description.
A. The box was a double box, filled with sawdust around; double walls, filled in between the walls.
Q. How was the inside divided, if at all?
233 A. There was a partition inside of tin, and a groove made, with the door at one end of the box to slip in; the tin fixed with lead and putty, so that it would be water-tight.
Q. What proportion of the box was divided off by this partition?
A. I think the small partition was ten to twelve inches wide; the space divided off was from ten to twelve inches wide.
Q. What way was there of getting into this part divided off?
A. It was covered, with a lid to it.
Q. How could you get into the main part of the box?
A. There was a big lid or cover the whole box; was a lid to each department.
Q. When the apartments were closed was there any communication between the two?
A. There didn't appear to be any communication at all.
Q. Here are four exhibits, A, B, C, and D; which one, if either, resembles the box you made?
A. This one, (Exhibit D.)
(COMPLAINANT'S COUNSEL. "The witness has not yet examined or seen the inside of Exhibit D.") (DEFENDANT'S COUNSEL. "Though the outer lid of Exhibit D was open.)
Q. Who made Exhibit D itself?
A. I made it—this box, (Exhibit D.)

234 Q. Did you make it as a model of anything?

A. I made, as near as I could, a model of the box I made for William Davis.

Q. When you say the box you made for William Davis, do you mean the box you have described?

A. I mean the box I have described since I have been on the stand.

Q. Does Exhibit D correspond with the box you made in '57, which you have described?

A. It is similar, as near as I could come at it on a small scale.

Q. Do you remember whether you were told, when this box was ordered, what it was for—meaning the model, Exhibit D?

A. No, sir.

Q. When you were ordered to make the box made in 1857, were you told what that was for?

A. No, sir.

Q. State, if you can, any circumstances which led you to remember that it was in 1857 that you made the box?

A. Well, I have several; first place, sickness of myself a year or two previous, in 1855 and 1856; I was ill with the rheumatism; I was unable to perform a regular day's work. In this same summer of 1857 I lost a child.

Q. Anything else?

A. Not that I recollect.

Q. Were your daughters sick?

235 (Objected to as leading.)

A. Yes, sir.

Q. When was she sick?

(Same objection as to last question.)

A. In the same spring I made the box; spring of 1857 she was sick over a month; confined in bed over a month.

Q. Did you ever see, at any time, Mr. Davis using the box you made?

A. I did one time; I thought it was the same box.

Q. When and where was this?

A. Well, sir, it was in the spring of 1859 or '60; my impression is it was '60.

Q. What was he doing with it?

A. He was using it for fish purpose; for freezing fish.

Q. Did you examine particularly to see?

A. I did not; I saw the outside of the box, and saw some fish coming out of there froze, but did not particularly examine.

Cross-examination by Mr. Prentice:

Q. Where were you living when you made that box made in 1857?

A. On Miami avenue.

Q. What number?

A. I believe the number was 50.

236 Q. Whose house?

A. A. Tuttle pretended to own it; he was only agent for it.

Q. Where is he now?

A. I don't know.

Q. How near the Grand Circus is that house?

A. Between John R. street and the Grand Circus, on the west side.

Q. How many houses from the Grand Circus, then?

A. I don't know; I never counted them; Barnes, the baker, was my next neighbor towards the south side.

Q. Was it a double or single house that you lived in?
A. Double.
Q. Which half of the house?
A. The southeast half.
Q. Did you have any place of business?
A. I had a place when I was jobbing; I had a bench in that shop with Tuttle.
Q. What street was the shop on?
A. On Farmer street.
Q. Between what streets?
A. Between Grand River and John R.
Q. You are positive?
A. Yes.
Q. Where was Mr. Davis' place of business then?
A. I don't know.
237 Q. Where did he live?
A. I don't know.
Q. Were you acquainted with him?
A. I was acquainted with William Davis then.
Q. How long had you been acquainted with him?
A. In the fall of 1856.
Q. Where did he live then?
A. I don't know.
Q. Where was his place of business in the fall of '56?
A. I didn't know.
Q. How much work did you do in the fall of '56?
A. I worked every day when I could; if I had a job in the shop I did it.
Q. How much did you work in the summer of '56?
A. I kept right on. That's the year I commenced to work. I commenced to work in the fall; in the summer I didn't do much.
Q. Keeping books?
A. No.
Q. Do you read and write?
A. Some; yes.
Q. Did you ever do any other work for Mr. Davis than what you have stated?
A. Yes, after that I did in '59 and '60; I done considerable work for him.
Q. What was it?
238 A. Most all kinds; bought produce for him, built boats for him, set trap-nets for him, built ice-house for him, worked inside the house some time for him, fixing it. The last work I did for him was packing ice. That is all.
Q. Where did you take the box that you made in '57?
A. I did not take it, he took it.
Q. Who helped him carry it away?
A. I don't know; I wasn't there when the box was taken away.
Q. When did he pay you for it, before or after he took it away?
A. I think it was after. He furnished all the stuff.
Q. Who assisted you in the construction of the box?
A. Nobody.
Q. Was Mr. Davis there when it was being made?
A. He was there when I was making it.
Q. Did you ever see that box again; if so, when and where?
A. I think I saw the same box again on De Garmo Jones' dock in the fall of '59 or spring of '60; my impression is it was '60.

Q. Where is that dock?

A. On the river, between Griswold and Wayne, or Shelby; I think right back of the Board of Trade place; I think between Wayne and Shelby.

Q. Where was it, on the dock or in the warehouse?

A. On the dock, I think.

239 Q. What were they doing with it?

A. They appeared to be freezing fish with the box; they put fish in.

Q. The dock is not covered, is it?

A. No, not covered; I think there was some kind of a shanty; don't know whether the box was in the shanty or not; think it was outside.

Q. How much fish did you see there?

A. Not a great many; a hundred pounds or so on the bottom of the box.

Q. Where was your child that died buried?

A. Mount Elliott Cemetery, here.

Q. From what church?

A. St. Ann's, here.

Q. What was the name of the child?

A. Mary Josephine.

Q. When did you make Exhibit D?

A. Latter part of January or first of February, 1872, I think.

Q. Who asked you to make it?

A. David Davis.

Q. Did he tell you how to make the box?

A. No, sir.

Q. Did he tell you how large to make the box, Exhibit D?

A. No, sir.

Q. When did you see David W. Davis before you made Exhibit D?

240 A. I used to see Mr. Davis most every week.

Q. Did not you have some talk with him about making a box at some time?

A. I didn't have no talk with him. He asked me if I recollected making a box for his father. I told him I did.

Q. Didn't you tell him anything more than that?

A. That is the answer I told him. Then he asked me more than that; he asked me could I make him a model like that. He said there was no hurry for it. I told him I would make one.

Q. That's all he said to you?

A. That's all he said to me and that's all I said to him.

Q. When did you next see him after Exhibit D was finished?

A. The next time I saw him was when I brought the box there.

Q. Just as it is now?

A. Just as it is now.

Q. Have you seen any boxes like that from the time you made the box in 1857 up to the time you made Exhibit D?

A. No, sir.

Q. How much did you get for making Exhibit D?

A. Guess I havn't settled yet; I took some oysters, and guess I have overtraded the box now.

Q. Who furnished the material?

A. I did.

241 Q. What is your business now?

A. Working at carpenter-work—jobbing.

Q. Have you a shop?

A. Yes.
Q. When did you last work for William Davis?
A. I believe in 1862.
Q. Do you owe Mr. Davis any money?
A. I don't know as I do; can't tell.
Q. When you made this box, in '57, did any one in the shop see it?
A. Men came in and out; might have seen it.
Q. Can you tell any one that saw it?
A. Didn't know any one that came in and out; they were strangers to me.
Q. How long did it take you to make it?
A. About three days.
Q. Was it a double or single box?
A. Double.
Q. Was it filled in or not?
A. Filled in with sawdust.
Q. Where did you get the sawdust?
A. Davis brought it.
Q. You say you made this in the spring of '57?
A. Yes, sir.
Q. When were you taken sick with rheumatism?
A. In July, 1854.
242 Q. How long were you sick?
A. Over two years; I had a relapse.
Q. Any memorandum to show when you were taken sick?
A. No, unless the doctor's bill; don't know as I have that.
Q. Who was your doctor?
A. Crossgrand; now in Canada; in Windsor.
Q. Any other doctor?
A. No.
Q. Did he attend you the entire two years?
A. No.
Q. How long did he attend upon you?
A. He attended, probably, half a dozen times; he prescribed for me, and gave me prescriptions.

PETER JARRIAT.

Subscribed and sworn to before me this 13th day of April, 1872.
DON. M. DICKINSON,
Examiner.

(Examination adjourned to 2.30 o'clock, same day.)

Mr. Holmes appears for complainant. Mr. Kent appears for defendants. Testimony for defendants continued.

AMELIA RAYLE, a witness produced on behalf of defendants, being duly sworn and examined, testified as follows:

243 Q. You are the daughter of William Davis, and sister of David W. Davis and Samuel H. Davis?
A. Yes, sir.
Q. Do you reside in Detroit?
A. Yes; I have lived here since the fall of 1856.
Q. How old were you then?
A. I was thirteen years old in September, 1856.

Q. With whom did you then live?
A. My father.
Q. Do you remember on what street you lived when you first came to Detroit?
A. On Adams avenue.
Q. How long did you live there?
A. About two months.
Q. Where next did you live?
A. Jefferson avenue.
Q. Whereabouts on Jefferson avenue?
A. In a white frame house next to Mrs. Ward's boarding-house, this side.
Q. Do you remember how long you lived there?
A. Till the first of May following; we left Adams avenue in January, '57, and went to Jefferson avenue then.
Q. Do you remember what your father's business was when you lived in Jefferson avenue?
A. Fish business.
Q. Did you at that time ever see any frozen fish at your house?
244 A. Yes, sir.
Q. Do you remember what time of year it was—warm or cold weather?
A. It was warm weather.
Q. How hard were they frozen?
A. Solid; they were hard.
Q. Where did you see them first; whereabouts in the house?
A. I don't know whereabouts they were.
Q. Do you know where they were kept?
A. No, sir.
Q. Did you ever see in or about that house a box used for preserving fish?
(Objected to as leading.)
A. Yes, sir.
Q. Do you know where that box stood?
A. No, sir.
Q. Where do you think it stood?
A. I can't call it to memory.
Q. Did you ever see anything taken out of that box?
(Objected to as leading.)
A. Yes; fish.
Q. What was the state of the fish which you saw taken out of this box?
A. In good condition.
245 Q. Were they hard or soft?
(Objected to, as leading.)
A. Hard, as near as I can recollect.
Q. If hard, do you know what made them?
(Objected to—objection withdrawn.)
A. Frozen.
Q. Did you ever examine them—put your hands on them, I mean?
A. I don't remember; I presume I did; they were a great curiosity.
Q. Did you say you had them to eat at the table?
A. Yes.
Q. How often?
A. I don't remember.
Q. Do you remember more than once that you had them to eat?
A. Yes, sir.

Cross-examined by Mr. Holmes:

Q. You say that you saw frozen fish at the house on Jefferson avenue, in warm weather; do you mean in summer?

A. In the spring.

Q. How early in the spring?

A. We lived there till the first of May, and it was before that.

246 Q. How long before that?

A. I can't tell.

Q. What kind of a box was it?

(Objection to the leading question reserved by complainant's counsel.)

A. I can't describe it.

Q. How many fish did you ever see in it, or take out of it?

A. I don't know how many; I can't tell whether many or few.

Q. How were the fish that you ate cooked?

A. I don't know; the ones that we have now are fried.

Q. Then you don't know what was done to the fish to prepare them for the table?

A. No.

Q. You said, I think, that you couldn't recollect whether you examined the fish that you say were frozen or not?

A. That's what I said.

Q. What kind of fish were these?

A. I don't know.

Q. Your father was at that time in the fish business, I believe you said?

A. Yes, sir.

Q. Was he in the habit of having a good many fish at the house?

A. Yes, sir.

247 Q. How do you know that it was at Jefferson avenue that you saw these fish?

A. Well, I haven't anything that calls it to mind; not anything particularly.

Q. How do you know, then, that it was before May, 1857?

A. I know we had a barn there.

Q. Didn't you have a barn anywhere else that you lived in Detroit?

A. Yes, sir; that's the first I remember him freezing in it.

MRS. AMELIA RAYLE.

Subscribed and sworn to before me this 13th day of April, 1872.

DON. M. DICKINSON,
Examiner.

EMMA WORMAN, a witness produced in behalf of defendants, being duly sworn and examined, testified as follows:

Q. You are the sister of Samuel and David Davis and daughter of William Davis?

A. Yes, sir.

Q. Do you remember your father moving to Detroit; if so, when did he move?

A. I do remember; in 1856.

248 Q. Do you remember where he lived when he first came here?

A. On Adams avenue, in the fall of '56.

Q. Where did you move to then?

A. Jefferson avenue.

Q. How old were you at that time?

A. I was eleven years old.

Q. What was your father's business when he lived on Jefferson avenue?

A. Fish business.

Q. Do you remember seeing fish at that time?

A. Yes, seeing and eating them.

Q. Do you remember where or whether they had any particular place to keep them?

A. I do not.

Q. You say you remember of eating fish at that time?

A. Yes, sir.

Q. Do you remember any particular time that you ate fish; is there anything that makes you remember of eating fish there—anything special?

A. I can remember that I ate fish which had been frozen some time and then cooked, and it gave me a prejudice to eating fish ever since; this was on Jefferson avenue.

Q. Do you remember what the weather was at that time?

A. I don't remember.

249 Q. Do you know how these fish were frozen?

A. I do not.

MRS. EMMA WORMAN.

Subscribed and sworn to before me this 13th day of April, 1872.

DON. M. DICKINSON,
Examiner.

Adjourned to Monday morning, April 15, 1872, at 9 o'clock a. m.

APRIL 15, 1872.

Mr. Holmes appears for complainant.

Mr. Kent appears for defendants.

CHARLES JUNE, a witness produced on behalf of the defendants, being duly sworn and examined, testifies as follows:

Q. Where do you reside, Mr. June?

A. 115 Miami avenue, Detroit.

Q. What is your age?

A. I am 27.

Q. Were you ever in the ice-cream business?

A. Yes, sir.

Q. When were you in the ice-cream business?

A. In 1862 and 1863, at Newburgh, New York.

Q. Were you in the habit of freezing the cream frequently at that time?

250 A. Yes, sir.

Q. Describe the apparatus with which you froze it.

A. We had three different cans; two large ones held twenty gallons each; the other was a smaller one—same plan.

Q. Describe the method.

A. We would freeze with turning it, if in a hurry; we put the cream in the can, the can in salt and ice, and cover on the can; and there was no communication between the chamber holding the cream and that holding the salt and ice. We could freeze the cream just as well by not turning it, only that it took longer time to do so. I have often frozen cream without turning it, leaving the can standing in the freezing-mixture.

Cross-examination:

Q. When you froze the cream without rotating the can at all, did you do anything to the cream in the can?

A. No, sir.

Q. Did you sometimes scrape the cream from the sides of the can?

A. No, sir; not till after it was all frozen.

Q. Do you mean not till you scraped it off for use?

A. Yes.

Q. Was the cream frozen in this way as good as that frozen in the ordinary way?

A. Yes, sir.

Q. Did you ever see any patent ice-cream freezers?

A. Yes, sir; one.

251 Q. That was worked by a crank to rotate the can?

A. Yes, sir.

CHARLES JUNE.

Subscribed and sworn to before me this 15th day of April, 1872.

DON. M. DICKINSON,
Examiner.

2 p. m. MONDAY, *April 15th*, 1872.—Mr. Holmes appearing for complainant, and Mr. Kent appearing for defendants.

JOSEPH HARRISON, a witness produced and being duly sworn on behalf of the defendant, testifies as follows:

Q. How old are you, Mr. Harrison?

A. I am forty-four, (44.)

Q. Where do you reside?

A. 150 Third street, Detroit.

Q. How long have you resided in Detroit?

A. About twelve (12) years.

Q. Where did you reside in the year 1857?

A. At Superior City, Wisconsin.

Q. With whom did you reside while there?

A. With Mrs. Davidson; I left in August.

Q. Did you know of her having an ice-cream freezer?

A. I knew of her freezing ice-cream occasionally.

Q. Describe the apparatus with which she froze her ice-cream.

252 A. In a tin pail with a cover; ice and salt around the outside in a tub; no communication between the inside of the pail and the freezing-mixture in the tub.

Q. What, if anything, besides ice-cream did you ever know her to freeze with this apparatus?

A. I have seen chickens frozen—one or a part of one at a time; also bread.

Q. Did she freeze the articles frequently, or only occasionally?

A. I never saw it frozen but once; she used to put them in there to keep.

Q. How often did she put articles in the pail you have spoken of for the purpose of preserving them?

A. I never counted them; can't tell. If she had anything to keep she used to put them in there to keep them from spoiling.

Q. What season of the year was this?

A. In July.

Q. How do you know that this occurred in 1857?

A. Just because I was out of a sick-bed from a fractured knee. It was the year of the panic.

Cross-examination:

Q. How long were you in Superior City?

A. I went there, I think, in 1850. I came down in August, first, 1857; I returned then in about a month.

J. HARRISON.

Subscribed and sworn to before me this 15th day of April, 1872.

253 (Adjourned to 2 p. m., Monday, April 15, 1872, Mr. Holmes appearing for complainant and Mr. Kent appearing for defendants.)

It is hereby agreed and stipulated between the counsel for the respective parties in this matter that, in consideration of the sickness and inability of the commissioner, Mr. Don. M. Dickinson, to be present at the examination of this matter, that Daniel B. Hibbard, junior, a notary public in and for Wayne County, Michigan, may administer the necessary oath to, and take the testimony of, Albert Haryaman, Samuel Barlin, and Robert Keith.

Mr. ALBERT HARYAMAN being produced and sworn upon the part of the defendants, and examined by Mr. Kent, testifies as follows:

Q. What is your age, Mr. Haryaman?

A. 51 next June.

Q. Where do you reside?

A. No. 8 National avenue, Detroit.

Q. How long have you resided in Detroit?

A. About 18 years this time.

Q. What is your business?

A. I am a sailor.

Q. What is your position?

A. First mate of the steamboat Jay Cooke.

Q. How long have you been sailing?

A. About (34) thirty-four years.

Q. Do you know Samuel H. and David Davis?

A. I do.

254 Q. How long have you been acquainted with them?

A. Since the fall of 1856.

Q. Did you know, during his life-time, their father, William Davis?

A. I did.

Q. When did you first get acquainted with him?

A. I got acquainted with him the same fall of 1856.

Q. Where did he then live?

A. He resided upon Adams avenue, Detroit.

Q. State whether or not you saw in his possession in the fall of 1856, at his residence on said Adams avenue, any frozen fish?

(Objected to as leading by complainant's counsel. Answer taken subject to objection.)

A. I did.

Q. State all the facts connected with your seeing said fish.

(Same objection as before by complainant's counsel. Answer taken subject to objection.)

A. In the fall of 1856, (late,) in November or December it might have been, I went up to Wm. Davis' house with Mr. Samuel Davis; I went up for the purpose to get a mess of fish that Mr. Davis said he would

give me. Mr. William Davis, Samuel's father, gave me a mess of fish which were frozen; he took them from a box, and told me they were artificially frozen. There were two fish.

255 Q. What kind of fish were they?

A. White-fish.

Q. Was that out of the season of white-fish?

A. Yes, sir; it was later than they catch them in the river.

Q. How hard were they frozen?

A. They were frozen solid.

Q. Did you see the box from which they were taken?

A. I did. I could not explain anything about that box in particular, as I did not look into it at that time.

Q. What did you do with those fish?

A. I took them home, had them cooked, and ate them.

Q. How do you know this happened in the fall of 1856?

A. I know it was in 1856, because in 1856 my wife was very sick, and it interferred with my sailing business. This was in the spring of 1856 that I could not leave home. I got a situation as check-clerk with Collins & Vorce; I remained with them that season; it was in the fall of the election of James Buchanan. I remained on shore the whole season.

Q. How did you become acquainted with Mr. William Davis?

A. I got acquainted with William Davis by being on the dock with him.

Q. How did you come to be on the dock so much that fall?

A. My business was checking goods on the dock that fall.

256 Q. State when next, if ever, you again saw frozen fish in Mr. Davis' possession, and the circumstances connected therewith.

A. It was in the summer of 1857. In the spring of 1857 I was first mate of the steamboat "Bay City," with Captain J. W. Keith. That spring and the forepart of *of* the summer we carried a good deal of fruit—perishable property—for Mr. Davis. Davis requested me to take particular care of it, as it was easily damaged, and I done so, from the latter part of June to latter part of July; I could not say the exact date in the summer. About that time Mr. Davis told me that he would give me a mess of fish to take home, and he gave me a mess of frozen fish. I took them home, and ate them as I did the others.

Q. Did you see the box where the fish were kept by Mr. Davis?

A. I did.

Q. Describe it, if you can.

A. It was a box from four to six feet long, about three feet deep and three feet wide, with a partition square across one end of it; partition was of tin or some other metal; had an outside and an inside lid to it; that was about the description of the box.

Q. Did you notice the walls of the box?

A. I did not notice the walls in particular, only the partition in the box; they were made, as I understood from Mr. Davis, double.

Q. How did the box you then saw resemble Exhibit D, (now shown witness?)

257 A. Exhibit D resembles the box I saw as near as can be.

Q. Was the method for getting in the different chambers the same?

A. I think they were.

Q. What, if anything, was in these chambers when you saw them?

A. There was ice and salt in one and fish in the other.

Q. How many fish, and what was their condition?

A. I could not state how many fish; perhaps from fifty to one hundred pounds; they were frozen.

Q. Solid or not?

(Objected to, as leading, by counsel for complainant. Question withdrawn.)

Q. How hard were they frozen?

(Objected to by counsel for complainant, as leading, taken in connection with the previous question; answer taken, subject to objection.)

A. They were frozen solid.

Q. Where was this box when you saw it?

A. I went with Mr. Davis from the boat up the dock; I think it was De Garmo Jones' dock the box was on.

Q. Did you ever see, at any other time, frozen fish in this box you have described, in Mr. Davis' possession?

A. I had fish out of the box I have described two different times within a short time of each other; can't say how long.

258 Cross-examination:

Q. When did you begin as mate on the Jay Cooke?

A. She has run four seasons; I fitted her out; this is her fifth season; she first came out in July.

Q. Where does she run from, and where to?

A. From Detroit to Sandusky; she hails from Detroit; J. B. Clarke and others own her.

Q. What did you do with the first fish that Mr. Davis gave you?

A. I took them home.

Q. What then?

A. I had them cooked and ate them.

Q. What was done to prepare them for the table?

A. They were thrown into cold water—the frost was taken out them in that way—and fitted for the table.

Q. How do you know that it was the fall of the election of James Buchanan that Mr. Davis gave you these fish?

A. Because it was at the time I was in the employ of Collins and Vorce.

Q. How do you know that?

A. I know that, because that was the fall I became acquainted with Mr. Davis, and that was the only season that I staid ashore; Collins and Davis were stiff democrats and I was a strong republican, and that was impressed strongly on my mind.

Q. What were you doing the year before you stayed on shore?

259 A. I was mate of the steamboat Arrow.

Q. Where did she run?

A. She run from Detroit to Toledo.

Q. Where did she hail from?

A. It strikes me that she hailed from Trenton; she might have hailed from Detroit.

Q. How long did you run her?

A. All that season; it might have been eight or nine months or more.

Q. When did you begin to run on the Arrow, and when did you leave off?

A. I can't say whether I was on the Arrow one season or two; I think one.

Q. What was your position on the Arrow?

A. I was mate of her.

Q. When did you leave the Arrow?
A. I laid her up in the fall of 1855.
Q. Was it on the Arrow that you had trouble with a man about some goods that were put on board?
A. I had no trouble with any man, to my knowledge.
Q. Who was the captain of the Arrow?
A. J. W. Keith.
Q. Did you ever have any difficulty while you were sailing, with anybody, about goods on the boat?
A. I have not, to my knowledge.
Q. Where was Mr. Davis' place of business in 1856?
260 A. All that I know is that Mr. Davis' place of business was at his house; he frequently was on one dock and then on another.
Q. Do you mean that he frequently had a place of business on one dock and then on another?
A. I mean to say that in 1856 I did not know anything about Mr. Davis' dock business no more than the dock he used to receive goods over.
Q. Then in 1856 his place of business was at his house?
A. It was at the house where I got the fish; whether he had any other place of business than the house I don't know.
Q. After you left the Arrow what did you do, and for how long?
A. I went to Collins & Vorce's for one season, from the spring of 1856 to the spring of 1857.
Q. When Mr. Davis gave you these fish where were you; what part of the house of Mr. Davis?
A. Out in the shed; it was a shed to the house.
Q. On what street was this?
A. On Adams avenue.
Q. What number?
A. I could not tell you, sir.
Q. Describe the house and situation of it.
A. To the best of my recollection, it was a double frame house, only a few doors from Woodward avenue.
Q. East or west of Woodward avenue?
A. East of Woodward avenue.
261 Q. Do you mean between Woodward avenue and the next street?
A. Yes.
Q, Which side of Adams avenue?
A. North side of Adams avenue.
Q. Did you carry any fish for Mr. Davis in 1856 and 1857?
A. In 1857 I might have carried fish for Mr. Davis; could not say what I carried; I carried a pile of stuff for him.
Q. Where did the stuff you carried for him go to?
A. I could not mention the places; we carried it by way of Sandusky; it went into Ohio.
Q. What did you do after you left Collins & Vorce?
A. I went as mate of steamboat Bay City.
Q. How long were you on the steamboat Bay City?
A. One season.
Q. From what time to what time?
A. I could not say date exactly; it was in 1857—from spring to fall.
Q. Where did she run?
A. From Detroit to Sandusky.
Q. What did you do after that, and for how long?

A. I shall have to stop to think awhile; I think in 1858 I was on one of the Cleveland boats; could not say certain; I had a broken-up season; I was on two or three different boats.

Q. How long was your wife sick?

262 A. She was sick from five to six months.

Q. What doctor attended her?

A. Dr. Kimball; he is now dead.

Q. Where did you live at that time?

A. On Second street, in 1856, in Detroit.

Q. Where did Dr. Kimball live at that time?

A. In Trenton.

Q. Where is Trenton?

A. It is fifteen miles down the river.

Q. After the season you were on the Cleveland boat what did you do?

A. I went in the steamboat City of Toledo after that, I think. I was mate of her two seasons.

Q. After that what did you do?

A. Then I went on the Jay Cooke; I may have missed some portion; I was on the brig Mohigan one season; can't tell which.

Q. Who was the captain of the City of Toledo, and where did she hail from?

A. Selia Dustin was captain, and hailed from Toledo; she might have hailed from Detroit.

Q. Have you given an affidavit in this cause?

A. Well, I did.

Q. Is the affidavit now read to you the one which you gave? (Below is a copy of the affidavit read to the witness:)

263 "Albert Haryman, being duly sworn, deposes and says that he is fifty years of age; that he was acquainted with William Davis during his life-time, and the said Davis was engaged in the sale of fish and other perishable articles, and that this deponent frequently saw the said Davis using a box for freezing fish in order to preserve them; that the said box was constructed in two parts; that one of said parts or divisions contained salt and ice, and the fish was placed in the other division and frozen, and kept frozen until sold; there was no communication between the two divisions of the box—each having a separate cover, and being connected only by the metallic partition between the two; that the said box was in constant use at the place of business of the said Davis during the years eighteen hundred and fifty-six and seven, where this deponent frequently saw it while doing business with the said Davis; deponent recognizes model, Exhibit A, as similar in construction to the device employed by the said Davis, as deponent has already described, and wherein the smaller chamber of the box received the ice and salt and the larger chamber the fish which it was desired to freeze; that during the years eighteen hundred and fifty-six and seven this deponent frequently saw said Davis remove frozen fish from said box and dispose of the same to his customers."

A. That is the one that I signed. [When this was got up, Mr. Sprague came to me; he asked me about it, and I gave him some points; gave him what I knew about it; and the day following, I believe, he came to me again just as our boat was going out. I was in a hurry; he read this over to me, and he swore me, and I signed this just as it was. I had no time to reflect upon it; the boat was waiting for me; and there

264 has been a mistake by Col. Sprague in regard to the model that I swore to. Exhibit D is like the box I saw. Another thing I

wish to explain in regard to the affidavit. I did not see Mr. Davis dispose of fish to customers, only to myself.]

(The above in brackets objected to by counsel for complainant as irresponsive.)

Q. Did you ever see any other box of Mr. Davis', except the one you have described, prior to 1860?

A. I could not say positively. I think I saw one when Davis lived on Jefferson avenue.

Q. What are the names of Collins & Vorce, with whom you worked?

A. James Collins and H. T. Vorce.

ALBERT HARYMAN.

Sworn to and subscribed before me this 15th day of April, A. D. 1872.

DAVID P. HIBBARD, JR.,
Notary Public, Wayne Co., Mich.

Adjourned to 9½ a. m., Tuesday, April 16, 1872.

APRIL 16, 1872—9½ o'clock a. m. Parties appeared—Mr. Holmes for complainant and Mr. Kent for defendants.

265 SAMUEL BARLIN, being produced as a witness on the part of defendants, and being duly sworn, testifies as follows:

Q. What is your age, Mr. Barlin?

A. I am twenty-nine, (29.)

Q. Where do you live?

A. 140 Lafayette street, East Detroit.

Q. When did you first come to Detroit?

A. In 1856.

Q. Where did you come from?

A. New Orleans.

Q. What month in the year did you come?

A. In October.

Q. Did you know Mr. William Davis, father of David and Samuel Davis?

A. Yes, sir.

Q. When did you first get acquainted with him?

A. I got acquainted with him early in the spring of 1857.

Q. Where did he then live?

A. He lived on Jefferson avenue, Detroit.

Q. Whereabouts?

A. Between Antoine and Beaubien, on Jefferson avenue.

Q. Which side of the street?

266 A. On the northerly side, three or four houses from Beaubien; frame house. A new brick house has since been built there.

Q. How did you come to get acquainted with Mr. Davis at that time?

A. Mr. Davis saw me on the street and asked me if I didn't want to earn a shilling. He told me I might come to his house and carry some wood in and do some chores. I went right along with him.

Q. Did you work for him, and how long at that time?

A. Yes, sir; two or three (2 or 3) days.

Q. Did you work for him soon again?

A. Yes, sir.

Q. How much or how long did you work for him for that spring?

A. I don't know how long it was. I worked till he moved.

Q. Was it one week, one month, or more?

A. It was, I am certain, more than one month.
Q. What did you do?
A. I used to smash ice; fill the box.
Q. What box do you mean?
A. Freezing-box.
Q. Whereabouts was this box?
A. On Jefferson avenue, in the rear of the house; in the barn.
Q. What sort of a box was it?
267 A. It was a square box about—can't tell exactly—think it was about four feet square and about five feet high.
Q. Was there anything in the centre of it?
A. Yes, sir; a tube in the centre of it; a round tube.
Q. How large was this tube?
A. I should judge this tube was from six to eight inches across.
Q. How was it closed at the top?
A. It was closed with a wooden plug with cloths rolled around it to make it fit tight.
Q. What opening, if any, at the bottom?
A. There was a small pipe that lead from the tube through the centre of the box for a waste-pipe.
Q. What was this box used for?
A. For freezing fish.
Q. Where did you put the fish?
A. There was little hooks put on the side of the wall in the box, and the fish hung by the heads.
Q. How many at a time?
A. I don't know; couldn't say.
Q. How did you freeze them when hung there?
A. They were froze, solid.
Q. What did you do to freeze them?
A. Charged the box—filled it with ice and salt.
Q. What did you mean by "charging the box?"
A. That is filling the tube; that is, the ice and salt was put into the tube from the top.
268 Q. How often did you see fish frozen in this way, then and there?
A. I don't know; it was very often; couldn't say.
Q. Where was the fish kept after they were frozen in this way?
A. They were then taken from the hooks and packed on the floor on the inside of the box.
Q. Which of these exhibits resembles the box you have described, if any?
A. Exhibit B is like the one they had on Jefferson avenue.
Q. How about the walls?
A. They were very thick; can't say how thick.

Witness cross-examined by Mr. Holmes, counsel for complainant:

Q. How do you know that you came to Detroit in 1856?
A. Because we lived at 125 Lafayette street east. Mother had her receipt of her rent, and she always remembered the time we came, and I do, too.
Q. Is your mother alive?
A. Yes, sir.
Q. How long did you work for Mr. Davis?
A. First time I worked for him until he moved to Congress street from Jefferson avenue.
Q. How long was that?

A. It was in 1857, I should judge. It was over a month.
269 Q. What did you do then?
A. Mother was taken sick, and I went home.
Q. How long was your mother sick?
A. I don't know that.
Q. What was her disease?
A. All kinds of complaints; she had all the bones in her body broken; it was pleurisy and dyspepsia.
Q. What doctor attended her?
A. Dr. Gorton.
Q. Is he dead or alive?
A. Dead.
Q. What did you then do?
A. After that I came back again to Mr. Davis'.
Q. When was that?
A. That was in the same year, 1857; can't tell what month.
Q. What part of the year?
A. In the latter part of the summer.
Q. How long did you work for him then?
A. I worked for him on Congress street; don't know how long.
Q. What did you do after you left Mr. Davis the second time?
A. I went to school.
Q. What school, and for how long?
A. Couldn't say how long; couldn't have been over three (3) months; at the Fort street public school, (colored.)
270 Q. What did you do then?
A. I then went with Mr. Davis again.
Q. Who was your teacher?
A. Mr. Monroe.
Q. Did you work for Davis this time?
A. I worked for him till I hurt my foot; don't know how long that was.
Q. How long was it as near as you recollect?
A. I couldn't say; don't remember.
Q. Can't you say whether it was a year or six months, or more or less?
A. It might have been a year, and it might have been more than a year.
Q. Where was Mr, Davis living at this time?
A. He was living on Cass street somewhere; I don't know the place.
Q. What was his business?
A. Fish business.
Q. Did he have this box there?
A. I don't know about that, because I went home again.
Q. How long did you stay at home at this time?
A. I don't know how long it was. I stayed until Mr. Davis came after me.
Q. State, as nearly as you can, how long.
A. Couldn't say, as I don't know.
Q. What were you doing at home?
271 A. Staying at home keeping house; mother was out washing.
Q. Was this while you had the sore foot?
A. Yes, sir.
Q. Did you have a doctor?
A. No, sir.
Q. What did you do next?
A. Mr. Davis came after me and I went to work for him.
Q. How long did you work for him this time?

A. He was then living on Lafayette street. I worked for him until 1868, until he died. I worked steadily for him until he died, in 1868.
Q. What was your work?
A. My work was breaking ice and freezing.
Q. Was this your work all the time?
A. Yes, sir.
Q. Was it the only work you had?
A. The only work was about the house and freezing.
Q. How much work was there about the house to do?
A. There was considerable for one person to do; it was a large house.
Q. Did he live on Lafayette avenue when he died?
A. No, sir; he moved from Lafayette avenue to Madison avenue; from there to Lafayette street east; there he died.
Q. Did he have this box at all these places?
A. Yes, sir.
272 Q. And you were employed as you have stated?
A. Yes, sir. This box he had he carried to Madison , but did not put it up; it was not the same box all the time, but this box he carried with him when he moved to all these places.
Q. Was this box used at all these places except at Madison avenue?
A. Yes, sir.
Q. Used continually?
A. Yes, sir.
Q. Was any other box used by Mr. Davis during this time?
A. I never knew of any kind.
Q. What year did Mr. Davis go on to Lafayette avenue?
A. I couldn't tell you, sir.
Q. What year did he leave Cass street?
A. I don't know that; did not pay any attention to the year.
Q. What year did he leave Madison avenue?
A. I can't tell that either. I helped to move, but can't tell.
Q. Where were you born?
A. In New Orleans.
Q. When were you born?
A. In 1842.
Q. Will you produce your mother's receipt for rent of which you have spoken?
273 A. No, sir; I could not do that because they are lost; she may have burned them up, misplaced them, or lost them.
Q. Did you ever see this receipt?
A. Yes, sir.
Q. When did you see it last?
A. I have not seen it for ten years; it may be over.
Q. What was the name of your mother's landlord?
A. Francis was his first name; he's dead.
Q. What did you first do when you came from New Orleans?
A. I went to school; same school mentioned on Fort street.
Q. How long were you there?
A. I went to school that winter until the next spring, then I went to work for William Davis.
Q. Did you ever work for anybody else in Detroit except Mr. Davis?
A. Yes, sir; I have.
Q. For whom?
A. They did employ me steadily. I done job-work generally; carried and sawed wood.

Q. When was this?
A. Don't remember the year; cannot tell you.
Q. How many fish did you ever see in this apparatus at once?
A. Don't know; couldn't say.
274 Q. What became of the fish that you say were frozen in this way?
A. They were taken out and shipped or sold. I took them out as he ordered me. I don't know what was done with them.
Q. What are you doing now?
A. I am working for H. W. Dear; dealing in vegetables.
Q. How long have you worked for him?
A. Two years.
Q. What did you do before that?
A. I was freezing fish in Chicago for H. M. Curtiss.
Q. What was the tube of which you have spoken of made of?
A. Tin; never saw it made of anything.
Q. How old was you when you came to Detroit?
A. About 14 years; can't tell exactly; I presume I was thirteen or fourteen years old; somewhere along there.
Q. How near do you now live to the place you lived at in 1857?
A. About a block and a half.
Q. How were the fish taken away after they were taken out of the apparatus?
A. They were put into boxes.
Q. And carted away?
A. I don't know that, sir; I don't know how they were carried.
275 Q. How were they packed in these boxes?
A. They were laid straight; packed tight.
Q. Was anything else put into the boxes with them?
A. No, sir.
Q. Have you given an affidavit in this cause?
A. Yes, sir.
Q. Is the one now read to you the one to which you swore to? (Below is the affidavit now read to the witness:)

"Samuel A. Barlin, of lawful age, being duly sworn, says: I am resident of the city of Detroit, in the State of Michigan. In the year A. D. 1857 I commenced work for said William Davis, in said city of Detroit. At that time, to wit, 1857, said Davis was engaged in the sale of fresh fish and other perishable articles. In the warm weather said Davis froze his fish in order to preserve them, and I was a part of the time employed in breaking up ice to be used in freezing the fish; said Davis employed an air-tight box to receive the fish to be frozen, and through this box there passed a tube or pipe to receive ice and salt. There was no communication between the interior of the tube or pipe and the interior of the box. When in operation the tube was fitted with an air-tight cover, and the box also was fitted with a similar cover; it was a part of my duty to fill the box with fish and then fill the pipe with ice and salt, and so securely close the mouth of the pipe that there could no moisture enter the box from the pipe. The device I have just described was used by said William Davis at the time I commenced work for him in 1857, and for about ten or eleven years after that date,
276-7 during which time I was employed by him. He was engaged in the same business during the whole time I was so at work for him.

(Signed) "SAMUEL A. BARLIN."

A. Yes, sir.

Q. Can you give the name of any other person for whom you have worked in Detroit or elsewhere?

A. Yes, sir, I can. I used to saw wood for an old gentleman, Mr. Storm; can't tell when. Then I sawed wood for a woman called Mrs. Washington; then for another, Mrs. Augustus; then for a man who was lost on the Mayflower. I can't give date of any of these employments, or the year; it was job-work while I was working for Mr. Davis.

Q. Did you ever work in any of the hotels?

A. Yes, sir; for a short time.

Q. When and where.

A. At the Russell House, for H. Stevens; can't tell the date.

Q. What did you do there?

A. I run bells; that is, answered bells. Can't say how long I stayed there. I took another young man's place who was sick.

Q. Have you stated all the employments you have had?

278 A. All that I can remember at present.

SAMUEL BARLIN.

Subscribed and sworn to before me this 16th day of April, A. D. 1872.

DANIEL B. HIBBARD, JR.,
Notary Public, Wayne Co., Mich.

Adjourned until 2 p. m. to-day.

2 p. m. parties appeared. Mr. Holmes for complainant, M. Kent for defendants.

Mr. ROBERT KEITH, a witness produced and sworn on behalf of the defendants, testifies as follows:

Q. What is your age?

A. Forty-six the 11th of last June.

Q. Where is your residence?

A. Cincinnati, Ohio.

Q. What's your business?

A. Dealing in fish and oysters, game, and all such things?

Q. Where is your place of business?

A. 77 West Fifth street, Cincinnati, Ohio.

Q. How long have you been in that business?

A. About 21 years; all the time in Cincinnati.

279 Q. Did you know, in his life-time, William Davis, father of David and Samuel Davis?

A. I knew him very well.

Q. When did you first get acquainted with him.

A. In the spring of 1857.

Q. State how you first came to get acquainted with him.

A. In the spring of 1857 he came to Cincinnati with quite a number of barrels of fish. The parties he took them to could not sell them. He came to me to see if I would sell them. I did so; I sold them that spring. Mr. Davis shipped early vegetables from Cincinnati to Detroit; he was there several weeks, and the next fall he shipped me fish—fall and all winter. In the spring of 1858 he shipped me two (2) barrels of frozen fish—artificially frozen. Mr. Davis came two days afterwards; he saw me selling the fish. I told him the fish looked strange to me—as if they had been frozen a long time. Then he told me they had been frozen five months. Then I asked him the question how he done so. He

told me that he had succeeded in making a freezer to freeze, and had been working at and was trying to figure out for several years. He told me he had frozen some fish in Columbus a year or two before. I sold the fish and had no complaints of them.

Q. How hard were they frozen?

A. Well, I could not say how hard. They looked strange; they looked just like the fish now frozen in these freezers. I had not seen any before that time.

Q. What kind of barrels did they come in?

280 A. Common flour-barrels.

Cross-examination by Mr. Holmes, counsel for complainant:

Q. Was there any ice in the barrels?

A. No, sir.

Q. They were simply put into common flour-barrels?

A. Yes.

Q. How does fish go from here to Cincinnati?

A. By express and freight.

Q. How did these two barrels go to Cincinnati, which you have spoken of?

A. They came to me by express to Cincinnati; don't know how they started.

Q. What express company?

A. Either the United States or American; it strikes me it was by the United States.

Q. What time of the year was this?

A. I think it was in March, spring of 1858; I am pretty sure.

Q. How many pounds were there?

A. Two barrels; can't recollect the pounds.

Q. What kind of fish?

A. White fish and pickerel.

Q. About how many of each?

A. I think a barrel of each; a barrel of frozen fish don't weigh much.

281 Q. Were the fish whole?

A. Yes, sir.

Q. Did you enter the receipt and sale of those fish on your books?

A. I suppose I entered them upon the books, because Mr. Davis collected the money when he came down a few days afterwards—two or three days.

Q. What, don't you know whether you did or not?

A. I must have entered it when they came.

Q. Have you examined your books in regard to this transaction?

A. I went to hunt for my books last fall; my boys sent them to a paper-store for old paper.

Q. Then you state these things from memory alone?

A. Yes, sir.

Q. What paper-store were the books sent to?

A. Don't know. I never kept any regular account with Mr. Davis at all.

Q. Did you continue to have dealings with Mr. Davis after that; if so, for how long?

A. I did till, I think, a year before he died.

Q. To what extent?

A. A good many thousand dollars; can't say how much; have paid him as high as eleven hundred dollars in one week for fish.

Q. What makes you think that these two barrels came in March, 1858?

282 A. Mr. Davis came in 1857 and shipped vegetables to Detroit here for a number of weeks. I had a number of talks with him about ice-chests. He told me that he was going to freeze some fish in the fall. Then, when he shipped those fish, in the month of March, in coming down a couple of days afterwards, we had a long talk about the fish. We stood and looked at them. I took a mess of them home and ate them, myself. Mr. Davis stayed there several weeks. He shipped vegetables. We talked the matter over a number of times. As I was the only one that was getting any fish off him at all, I think it would be a good thing for me to make money out of when fish is scarce in the winter, and about starting my business there on Fifth street. I had about all the fish that was coming in there through him. Mr. Davis always paid me rent for the use of store while there. I had the whole market under my control, through him, in lake-fish. That is why I recollect so well about it.

Q. Well, how does all this enable you to say that it was in March, 1858, that the two barrels of which you have spoken of came to Cincinnati?

A. It was the third year after I started in business on Fifth street—number 81.

Q. Where were you in business before you went on to Fifth street?

A. I was at 25 Fifth street, where I first started.

Q. Is that all that enables you to fix the date?

A. I don't suppose it is; I was so deeply interested in this thing; I don't know how I could explain it any other way.

Q. Where were you in business before you went on to Fifth street, and for how long?

283 A. I was a house and sign painter by trade.

Q. How long were you at 25 Fifth street?

A. One year.

Q. Did you have any correspondence that time in 1858 with Mr. Davis on the subject?

A. Every few days, when the fish were coming.

Q. Have you examined his letters?

A. I have destroyed them years ago.

Q. To whom did you sell those fish—the two barrels?

A. Retailed them in the market, out of the store window; I could not tell to whom I sold them.

Q. Did you sell them for artificially-frozen fish?

A. I sold simply as fish; if we had told them we could not have sold them.

Q. They were not sold as fresh, were they?

A. Yes, sir; I would tell the people when they asked me how long they were caught, I warranted them good; couldn't tell how long they had been caught.

Q. Did you buy them of Mr. Davis or sell them on commission?

A. I bought them.

Q. Where was your shop before you were at 81 West Fifth street?

A. After I left 25 Fifth street I went into the market; my business increased so in the market I rented a store on Vine street, just above Fourth.

284 Q. How long were you there?

A. About nine months.

Q. How long in the market?

A. Had stands in the market all the time; in the spring of 1855 I moved to 81 Fifth street.

Q. Have you ever lived in Detroit?

A. No, sir; have stopped here a couple of weeks.

Q. Have any business connections with the Davis' now?

A. I have bought this winter eight or ten barrels of fish of them.

Q. How long does it take for fish to go from Detroit to Cincinnati?

A. Leave here this evening and get there to-morrow morning at ten or eleven o'clock.

Q. What makes you think that it was in the spring of 1858 that you received these two barrels of fish?

A. I don't know as I can think anything; I know it was in the spring, in March.

Q. Do you know also that it was about these very fish that Mr. Davis told you they had been frozen about five months?

A. Yes, sir; about those two barrels.

Q. Then you know it was in the same way, I suppose?

A. Yes, sir.

Q. How do you know it wasn't in the spring of 1859?

285 A. Another circumstance comes to mind that I can give; I put up six dozen quails in the month of October, 1857, and Mr. Davis was in the store about the first of April, same season; I called his attention to this box of quails. I kept those six dozen of quails five months perfect, and showed them to him, opened the box in his presence, took the quails around to the different saloons, they eat them and said they never had better; they were so nice and fresh. That makes me remember so distinctly; he keeping the fish and my keeping the quails, and having them there so close together.

Q. Didn't you ever keep quails at other times?

A. This was my first experience. I have kept them since, every year, more or less.

Q. Have you one of the Davis refrigerators?

A. I have a large one for keeping fish in the summer-time.

Q. When did you get it?

A. I think I got it two years ago; I bought it of Robert Orr, of Cincinnati.

Q. Did you ever tell anybody about these frozen fish you had of Mr. Davis in 1858?

A. I didn't, because I didn't want anybody to know.

Q. How often, since 1858, have you received frozen fish from Mr. Davis?

A. I couldn't tell; don't think I have received them every year; fish were cheap, and it wasn't necessary to freeze them.

Q. About how many years?

A. I can't recollect.

286 Q. How soon after 1858 did you receive any?

A. I refused to take frozen fish if I could get any others, and could most always get pen-fish—I mean fish kept alive in pens or pounds.

Q. How soon, after 1858, did you receive any frozen fish from Mr. Davis?

A. Can't tell; haven't thought anything about it. Don't know as I ever did. Can't tell when first commenced freezing them. I would not take them when I could get other fish. It was during the war that they first commenced freezing to any extent; it was only a few years back that they commenced freezing so many.

Q. Did you ever buy any frozen fish from any other person besides Mr. Davis?

A. Yes.

Q. Of whom?

A. I bought a good many of St. John & Buck, of Toledo, through John Clark, their agent, two years ago. This year I bought a large quantity of Giersdorf, of Sandusky.

Q. How long were you a painter, and when did you leave off?

A. I was a painter about three or four years; I left off painting in 1853.

Q. When you received the pen-fish, were they alive or dead?

A. Dead.

Q. Did you ever receive any pen-fish from Mr. Davis?

A. Yes, a large quantity; for a good many years since 1858.

287 Q. Have you talked with either Samuel or David Davis about the receipt of these two barrels of fish?

A. Yes, I have. Samuel Davis was in Cincinnati a few weeks ago; can't tell exact time. He asked me if I recollected anything about his father freezing any fish. I told him that I had got two barrels of frozen fish some years ago, but I could not tell just then, without thinking a little, when it was. I called to mind the circumstance. I first told Mr. Davis that I thought I could place pretty near the time. Mr. Davis went away; got back in the afternoon. I told him that I fixed in March, 1858, to the best of my recollection. [I went home that evening and spoke to my wife about it. I called her attention to eating some frozen fish that Mr. Davis had sent down some years ago, and she agreed with me as to time.]

(The above in brackets objected to by complainant as irresponsive and inadmissable.)

Q. What kind of box did you keep those five dozen quails in?

A. That is a secret of my own; I don't care about telling of it.

Q. To whom did you sell the quails?

A. The boys took them around to the saloons and sold them. It has been so long ago I don't think they would remember anything about them—Mr. Bowman, opposite the Burnet House—but he is gone; my books are destroyed, and I cannot give the names.

Q. Was that all the talk you had with Mr. Davis?

A. Yes; nothing more was said.

288 Q. Were these two barrels sent by car or by boat from Detroit?

A. I don't know.

Q. Did they come by the way of Sandusky?

A. My impression is that is the only way they could come at the time; have no knowledge how they came, except that they came by express.

ROBERT KEITH.

Reduced to writing, subscribed, and sworn to before me this 16th day of April, 1872.

DANIEL B. HIBBARD, JR.,
Notary Public, Wayne Co., Mich.

4½ p. m.—Adjourned until April 17th, 1872, 9 o'clock a. m.

WEDNESDAY, *April 17th*, 1872—9 o'clock a. m.

Mr. Holmes and Mr. Prentice for complainant, Mr. Kent for defendants.

DAVID W. DAVIS, a witness produced and duly sworn in behalf of the defendants, testifies as follows:

Q. What's your age?
A. Thirty-three.
Q. Who is your father?
A. William Davis.
289 Q. When did he die?
A. 1868, in November.
Q. Where do you now reside?
A. 75 John R. street, Detroit, Michigan.
Q. How long have you resided in Detroit?
A. Since early in the fall of 1856.
Q. With whom did you then reside?
A. I lived at home until father died, in 1868.
Q. Before coming to Detroit, in 1856, where did you reside?
A. Sandusky City, Ohio.
Q. For how long did you reside there?
A. Less than a year.
Q. Prior to that where did you reside?
A. Columbus, Ohio.
Q. With whom did you reside at Sandusky and Columbus?
A. With father.
Q. What was your father's business at Columbus?
A. When I worked with him in 1854 and 1855 he was in the fish business.
Q. Where in Columbus was his place of business?
A. On the market market-days; did some business on High street, in a small store there.
Q. Where did he get his fish?
A. Fish used to come in on the trains by express and freight from all points.
Q. How did he sell them; at wholesale or retail?
290 A. He sold at retail; I presume he sold some at wholesale; the business, though, was a retail business.
Q. What special means, if any, did he have of preserving fish at that time?
A. He had two boxes; they were alike, as near as I can recollect; they were four and a half feet long, about three feet long, about three feet deep; there were two chambers in these boxes—one to contain the freezing-mixture, and the other to contain the fish; the walls were about three or four inches thick; I presume they were packed; I don't know, I never examined; the boxes were there, and made when I saw them first; there was an opening to each chamber, and a cover made for them.
Q. In what way did you get rid of the drip of the freezing-mixture?
A. The drip ran through a hole in the bottom of the same chamber in which the freezing-mixture was put.
Q. What communication between the two chambers, if any?
A. There was no communication.
Q. How did those boxes compare with Exhibit A?
A. They were the same, only the walls were thicker.
Q. What did you have to do yourself, if anything, with the preservation of fish in these boxes?
A. I used to put the fish in them when there was any left over from the market; I also have taken fish out of them to deliver during the market-days and other days, to customers; we had market-days three

times a week; sometimes we had more fish than would go in these boxes? these we didn't put in.

291 Q. How were the fish put into the chamber for preservation?

A. They were put in on slat-work or shelves, so as to leave a space between each tier of fish.

Q. About how many did you get in each box?

A. I couldn't say how many; probably three hundred pounds; I never weighed them.

Q. After the fish was put in, what was the next step in the method of preservation?

A. The other chamber in the end of the box was filled with freezing-mixture.

Q. How often was that mixture renewed?

A. Two or three times a day; we always kept it full.

Q. What was the effect upon the fish in the preserving-chamber?

A. The effect was good.

Q. Did it freeze the fish?

A. Yes, when they were in there long enough.

Q. How long did it take to freeze them?

A. It would depend upon what quaintity was in there; I saw frozen fish taken out of the box, if you want to know that.

Q. Can you tell how long it took to freeze them? If you can, say so.

A. I don't know how long it took to freeze those I took out.

Q. Do you know how long it ever took to freeze any fish there?

292 A. No; I couldn't tell exactly.

Q. How often did you take frozen fish out of the box?

A. Most every week.

Q. What time of the year was this?

A. In the fall of 1854 and during the spring, summer, and fall of 1855.

Q. What was the state of the weather when you took the frozen fish out of the box?

A. I couldn't tell the state of the weather; but it was during the seasons of the spring, summer, and fall.

Q. What was done with these frozen fish?

A. Delivered to customers.

Q. What was your father's business after coming to Detroit in 1856?

A. He dealt in fish, butter, and produce.

Q. On what street did he reside immediately after coming to Detroit?

A. On Adams avenue.

Q. To what place did he remove from there, and when?

A. He removed from there to Jefferson avenue, in Chapaton's house; this was early in the spring, sometime in 1857.

Q. How long did you live there?

A. We lived there till some time in May, 1857.

Q. Where next did you move to?

A. On Congress street.

293 Q. How long did you stay there?

A. Nearly two years; until the fall of 1858.

Q. What, if any, means of preserving fish did your father use prior to 1858?

A. He had a box with non-conducting walls and a tube running down into it. He had a door in the side of it, and the waste water ran out through a small pipe in the bottom of the tube. There was a little plug cap that fitted into the tube, and I should judge the tube was tight, so that there was no communication from that into the box. It got stopped up once or twice—filled up with water; that is why I think it was tight.

Q. Give the size of the tube and the box.

A. I think the tube was about ten or twelve inches in diameter. The box was about four feet square and about five feet high, as near as I can recollect.

Q. Where were the fish put for preservation?

A. They were in the inside of the box. I never put any fish in the box myself. I have taken fish out.

Q. I mean in what position inside the box they were put.

A. They were stacked up from the floor, as near as I recollect.

Q. When taken out what was their condition?

A. They were frozen.

Q. How often did you take them out of this box frozen?

A. Several times.

Q. How does the box you have described correspond with Exhibit B?

294 A. It corresponds with it, with the exception of the walls; the walls were thicker.

(An apparatus called Exhibit E is introduced, and marked Exhibit "E.")

(Counsel for the complainant objects to the introduction of Exhibit E, and to all testimony in relation thereto, or to refrigerators constructed under Davis' patent of 1868, as immaterial and not pertinent to the issue, without objecting to each question as asked, which is agreed to by defendants' counsel.)

Q. Of what is Exhibit E a model?

A. Exhibit E is a model of the Davis preserving-chamber, (patented by William Davis in June, 1868, and re-issued in September, 1868,) showing the construction for an inside circulation of air.

Q. Wherein, if at all, is this invention an improvement upon Exhibits A, B, C, and D?

(Objected to for form and substance.)

A. It is different in a good many shapes; for preserving in an unfrozen state meats, fish, vegetables, fruits, &c., as the construction of the receptacle that holds the freezing-mixture is so arranged as to allow a free circulation of air over the top and underneath the receptacle, and behind the receptacle; when this receptacle is filled with the freezing-mixture, the space between the wall and the receptacle, the air is much colder than in any other part of the chamber, and as this cold air descends,

which it must, of course, it forces this warm air up and over the

295 top of the receptacle, and so on until the air in all parts of the chamber is of the same temperature; when this chamber is filled with perishable articles, the moisture, which is thrown off, is carried by the circulation of air and deposited upon the metallic sides of the receptacle.

Q. What is practically the advantage, if any, gained by this arrangement just described?

A. It will preserve fruits and vegetables and animal substances for weeks without decay in an unfrozen state, when the temperature stands in there, about thirty-eight to forty degrees Fahrenheit.

Cross-examination:

Q. You are one of the owners of the Davis patent?

A. I have one-third interest by assignment.

Q. Were you in business with your father before he died?

A. Yes, sir.

Q. For how long?

A. I was in business with him five or six years—interested.
Q. And before that you were in his employ, were you not?
A. Yes, but not steady.
Q. How many years did you work for him?
A. Off and on since 1854.
Q. In what years—I'll put that question different—how much off and how much on?
296 A. In 1854 and 1855, that is, the latter part of 1854–1856, up to the spring of 1857 I worked steady for him; then I went to work to learn a trade; I worked at the printing business—a printer's devil—and the jewelry business—manufacturing jewelry. I used to help him sometimes in summer, while I was working at my two trades; since from 1861 up to 1864 I worked for him pretty steady.
Q. Since then you have an interest in the business?
A. Yes, sir; a partnership up to the time of his death.
Q. While you were in the printing and jewelry business did you live at home?
A. Yes, sir.
Q. What was your father's business all these years?
A. He dealt in fish; caught fish; a fisherman; had nets; dealt in produce, fruits; he was the first man that shipped stuff from the South to this market during the summer.
Q. You say you first lived in Detroit—on Adams avenue; describe exactly the situation of the house.
A. It was a double frame house a few doors from Woodward avenue, on the north side of Adams avenue; I don't remember the number; on the west side of Woodward avenue.
Q. Who was your landlord there?
A. I don't know.
Q. How long did you live there, and when did you move?
297 A. We lived there from the time we came to Detroit until early in the spring or in February—I don't know—in 1857, then we moved from there.
Q. Was this house between Woodward avenue and the next street west of that avenue?
A. Yes, sir, it was.
Q. Where did you move to from Adams avenue?
A. On to Jefferson avenue.
Q. Whereabouts on Jefferson avenue? Describe exactly.
A. It was a frame house; the Chapaton house; a few doors, I think, from Beaubien street; on the north side of Jefferson avenue, east of Beaubien street.
Q. How long did you live there, and where did you move to?
A. Lived there until sometime in May, 1857, and then the family moved on to Congress street, between Randolph and Brush streets, north side.
Q. Who was your landlord on Congress street?
A. I don't know, sir; I don't know who owned the house.
Q. Describe the house.
A. It was a brick house, two or three stories high; we had the whole of the house where we lived.
Q. Was it over a store?
A. I believe there was a grocery underneath; I don't know who kept it.
Q. Which one of the row of similar houses you spoke of a moment ago?

298 A. It was at the east end: I can't tell whether it was the last house or second house; it was the east house of the row; all this row had stores underneath.

Q. How long did you live there, and where did you move to?

A. Pretty near two years; we moved sometime in summer or fall of 1855, to Cass street, a few doors north from Michigan avenue.

Q. Who was your landlord on Cass street?

A. A man by the name of Paton owned the house; don't know who father rented of.

Q. Who were your neighbors there, if you know?

A. I got acquainted with the Paton family just before we moved from there; I believe Paton is dead; the family, I think, is living here in city somewhere.

Q. How long did you live on Cass street, and where did you go to?

A. We lived there till the fall of 1861; some time in November; from there we moved to Lafayette street.

Q. How long on Lafayette street, and where to next?

A. We lived there until, I think, the spring of 1865, and moved up on Madison avenue; we lived there, I think, two years; we moved in the spring of 1867 to Lafayette street, east, and lived there until father's death, and until 1869, the spring after.

Q. Did you use the apparatus like Exhibit B at all these places?

A. No, sir.

299 Q. At which ones?

A. I know of using it on Adams avenue and on Jefferson avenue; these are the only two places I am sure of.

Adjourned till 2 p. m.

Q. Did your father afterwards have another tube apparatus; if so, when and where?

A. He did; he had one with four tubes in—Russell House block in 1864 or 1865—I can't tell exactly which.

Q. How long did he have it there, and what became of it?

A. Soon after it was built, and then torn down to make room in the store; can't tell exactly how long it was up.

Q. What one did he have after that, if any?

A. I think he had another about the same time with a wedge-shaped partition across the center, with a chamber each side; that has never been torn to pieces; we have got that one yet.

Q. Did you ever hear of an apparatus for artificially freezing fish in Sandusky; if so, who had it, and when did you hear of it?

A. I never saw any, and never heard of any till last fall; I saw the apparatus used by Mr. Anthony, claimed to be built under the Piper patent; what I saw was not tubes.

Q. Did you ever hear of an apparatus for artificially freezing fish in New York City?

A. No, until Mr. Piper had his suit with Brown and Seeley.

300 Q. When was that?

A. I think that is three or four years ago; I am not certain which.

Q. You never heard of such an apparatus in New York City till three or four years ago?

A. No, sir.

Q. Wasn't Gilbert Comstock of New York up here a good while before that?

A. He might have been here twenty years before and I not see him; the first time I think I saw him was in 1866; then only for a little while.

Q. Where was that?

A. I saw him in a lawyer's office here in Detroit.

Q. Do you know what he was doing up here?

A. Yes, sir.

Q. What was it?

A. Contracting for white-fish.

Q. And you never saw him before 1866?

A. Not to my recollection.

Q. Did he tell you about a New York apparatus?

A. No, sir.

Q. Have you ever shipped fish to Comstock, and if so, when did you begin?

A. I think in 1866, 1868, 1869, 1870, 1871, 1872; I think in all these years we shipped to almost all those parties in Fulton market, New York, and almost all other markets in the United States; I was not intimately acquainted with Gilbert Comstock till 1868.

301 Q. How long, altogether, did you see the apparatus like Exhibit B, as you have said, used?

A. I saw it used while we lived on Adams avenue and Jefferson avenue, like Exhibit B.

Q. How long did you see it used?

A. Altogether, about five or six months that I saw it.

Q. Was it used continuously during that time?

A. It was used that time right along.

Q. Publicly used?

A. It was publicly used where we had it; we never kept it a secret; anybody who came there and desired to look at it could do so.

Q. How many fish should you say were ever frozen and preserved in that apparatus?

A. I could give no estimate at all.

Q. Can't you say whether a hundred or a thousand pounds?

A. Yes, I can say whether it was one hundred or one thousand.

Q. State as near as you can.

A. It might have been one thousand or two thousand pounds.

Q. What was done with these fish frozen—preserved—in it?

A. The first fish we had in there, after they had been in there some time, we used to sell them around at different places.

302 Q. Give the names and residences of the persons to whom you sold them.

A. I couldn't do that.

Q. What time of the year did you sell these first fish?

A. December, January, February, 1856, 1857.

Q. After these first fish, what was done with the rest that were frozen and preserved in this apparatus?

A. After we moved down to Jefferson avenue, I went to work to the printing business; consequently, I do not know what became of them.

Q. When you speak of these first fish, do you mean one lot of fish or several; I mean, do you refer to a single lot of fish preserved in this apparatus and then sold?

A. The whole box of fish was not put in at once; we kept putting in and taking out, and kept the box replenished.

Q. Do you mean putting in and taking out all through the time of which you have spoken?

A. No, I do not; we filled up the box in small lots until it was two-

thirds full; then we sold out of it, and didn't put any more in at Adams avenue; and on Jefferson avenue we kept the box replenished, that is, at the time that I saw it.

Q. What kind of fish were these?

A. Some white-fish, pike, silver-sides, and perch.

Q. Were these the fish frozen at Adams avenue?

A. Yes, sir.

303 Q. Where did your father get the white-fish from?

A. He got all the fish from Munroe at that time, I believe from Dibble and Chapman; we got fish of them for two years or three years.

Q. Do you know whether Chapman is alive or dead?

A. I believe, alive; I saw him about a year ago; I believe he is a railroad contractor now; don't know where he lives.

Q. Do you keep the same kind of fish at Jefferson avenue?

A. Just after we moved there, awhile I tended to the box; what fish I saw put in was bass and pike.

Q. What is the season of bass and pike, here in Detroit?

A. We get them the year round; I mean catch them fresh; they did these, too.

Q. In whose shop in Columbus were the boxes you have spoken of then kept?

A. In brother's store, I think; at least, he claimed it.

Q. How many fish were kept in these boxes altogether?

A. That would be a hard matter to guess at; I can't say; we put them in most every week; might have been several thousand pounds in that time, in 1854 and 1855.

Q. How many frozen fish did you ever see in, or taken out of, these boxes in Columbus, as nearly as you can recollect?

A. Several hundred pounds that I have taken out myself.

304 Q. Were the fish always frozen when they had been kept in this apparatus?

A. Sometimes; sometimes not; owing to how many and how long a time they had been in there.

Q. Do you mean that when there were a good many fish in the box they were not frozen?

A. If the fish were left in there long enough they would all freeze, providing the box was filled full.

(Answer objected to as irresponsive, and question repeated.)

A. I don't understand the meaning of that question at all.

Q. When there were a good many fish in the box, were they frozen, to your knowledge?

A. Well, there were generally some frozen, if the fish had only been in a short time, say twenty-four hours.

Q. Which were those; in what part of the chamber?

A. Next to the partition.

Q. Did you ever know fish being frozen in the other part of the chamber?

A. Yes, sir; I have seen it frozen all over the chamber.

Q. How many fish were there in then?

A. From a hundred to a hundred and fifty pounds.

Q. Distributed equally over the chamber?

A. Yes, sir; on shelves over all the length of the chamber.

305 Q. How long did it take to do this?

A. I don't know.

Q. To whom were the fish frozen in Columbus in these boxes sold?

A. These boxes were kept there to supply the order and city trade, boarding-houses, &c.

Q. Can you give the name of any person to whom any of these fish were sold?

A. I can't, as we were delivering frozen fish and unfrozen fish every day almost.

Q. Were any of them sold to fish-dealers?

A. No, sir, not to my knowledge, as there was only one fish-dealer there beside ourselves at that time; he ordered his own fish.

Q. Who was that?

A. I don't recollect his name now.

Q. Fish trade in Detroit in '56 and '57 was considerably smaller than it is now, was it not—I mean in the number of dealers and in the market for the fish?

A. There wasn't so many dealers; there was more fish caught than is now; the trade is larger now; there is considerably more demand for fish now than there was then.

Q. Where did your father get the fish frozen in Columbus?

A. They came from Sandusky and Cleveland, most of them; there was a firm at Sandusky name of Dibble and a man by the name of Blosom used to ship us fish; these are the only two names I am familiar with.

306 Q. Were these boxes used publicly at Columbus?

A. They were used there in the store to sell fish out of; we never made a secret of it.

Q. What kind of fish?

A. White-fish, pickerel, bass, trout; in the spring of the year most all pickerel.

Q. In what season of the year were they sold?

A. During warm weather and summer and fall.

Q. It is common, is it not, and has been since before '57 for frozen fish, I mean fish not artificially frozen, to be for sale in market here?

A. I don't know.

Q. Hasn't it been a common thing for frozen fish to be on sale here in winter?

A. When I have been through the market here sometimes in winter I have seen frozen fish on the benches for sale in dead of winter when everything was frozen.

Q. Is it not a common thing?

A. I can't state; it depends upon the weather.

Q. Please give the exact place in Columbus where your brother's store was.

A. It was on High street, between Broad and Gay, on the right-hand side going south from the depot, (the C. C. & C. R. R. depot,) about half way between Broad and Gay; don't know the number.

Q. What part of the house upon Adams avenue was the box you have described situated?

A. It was in a kind of temporary shed that was put up for wood, &c., in the yard.

307 Q. And in what part of the house upon Jefferson avenue?

A. I don't know whether it was at the edge of the barn or a continuation of shed; I don't know which it was in, whether barn or shed.

Q. Where did your father get his ice in Detroit?

A. I don't know, nor in Columbus either; think he had an ice-house of his own.

Q. Was your father in the fish business all the time he was in Columbus?

A. He was in the fish business when I worked for him; had been in the fish business before that for some years, as he told me.

Q. Did you work for him all the time he was in Columbus; if not, when and for how long?

A. I was sick for about one year and a half before I went to work for him in the market, and before that I went to school; I did not; I worked for him in the fall early of 1854, and the whole year of 1855.

Q. Did you swear to the affidavit now read to you?

"David W. Davis, of lawful age, being duly sworn, says: I am thirty-two years of age, and a resident of the city of Detroit, in the State of Michigan, and am a son of William Davis, to whom the United States granted a patent in 1868 for an improvement in preserving meat, fish, and other perishable matter; said William Davis died in November, 1868; in 1854 I commenced work for said William Davis, and know that at that time, and continuously for every year thereafter until his
308 decease, said William Davis was engaged in the business of selling fresh fish, oysters, game, fruit, and berries; that in order to preserve his fish said Davis froze them in a refrigerator wherein were contained two air-tight chambers, the outer one to receive the fish, and the inner one to receive the ice and salt, and said chambers were so arranged that the fish were not brought into contact with the ice and salt, and so that there was no communication between the interior of said chambers. I was engaged by and with said William Davis from said 1854 to his decease in 1868, and know that the device constructed substantially as I have described it was continuously used by said William Davis in freezing fish between the years 1854 and 1867, when he changed the construction somewhat, in order to produce a circulation of air within the chamber which received the articles to be preserved; when ice and salt were employed in its proper chamber, and in proper proportion, the fish or other articles designated to be frozen in their proper chamber were frozen after being congealed; the fish were preserved for many weeks in a frozen condition without being removed by from time to time, as the ice and salt melted, recharging the proper chamber with ice and a smaller proportion of salt; for many years previous to 1856 said Davis was engaged in the business described in Columbus, Ohio, and during and subsequent to 1856, until his decease, said Davis carried on said business at Detroit, Michigan, and during all the time from 1854 to the decease of said Davis I was at work for and with him; I recognize models marked respectively as Exhibits A, B, and C, showing the devices employed by said Davis at Columbus and Detroit during the time to which I have referred; I have examined the apparatus em-
309 ployed by the defendants in this case, and know that the same was constructed upon the principle and in the manner described in the patent to said Davis, and hereinbefore mentioned."

A. Yes, sir.

Q. What is Joseph Harrison's occupation?

A. He is working for S. H. Davis & Co. at the present time.

Q. When did you move to Sandusky?

A. We moved to Sandusky from Columbus, Ohio, in the fall of 1855—late in the fall—can't give the month.

Q. When did you move away from Sandusky?

A. The family moved up here late in the fall of '56; can't give the month.

Q. What was your father's business in Columbus?

A. He kept a public house there for about nine months before I went to work for him; some time before he was in the dairy business and fish business, so he told me; this dairy business and fish business was prior to his removal to Northwood; I don't remember when he kept the hotel.

Q. Did you sell any refrigerators in Detroit in the summer of 1871?

A. Yes, sir.

Q. Did you sell one to George H. Prentiss June 9th, 1871?

A. I presume you must have had it, for I recognize the handwriting of the bill you present.

310 Q. How was that constructed?

A. I never saw the box; I couldn't answer; we make different sizes, but the principle is intended to be the same in all.

Q. Like which exhibit is that?

A. Like Exhibit "E," with some minor improvements.

Q. Where were you born?

A. I was told that I was born in Pittsburg, Pennsylvania.

Q. When?

A. In 1839, the 11th of October.

Q. What were white-fish worth in the fall of 1857 in the Detroit market?

A. During the catching season they were worth probably $7 or $8 a hundred, 7 or 8 cents a piece by the hundred; other fish were worth 2½ or 3 cents per pound, perhaps.

Q. Did you ever know of your father's keeping fish in boxes with ice in the same compartments as the fish were?

A. Yes, sir; about two years before he died; never knew of it before that.

Q. Have you been present here during the taking of the testimony up to to-day?

A. I have not been here all the time; almost all the time I have been; with the exception of two or three witnesses, have heard all.

311 Q. Have you taken notes of the testimony as given?

A. No; I wrote down part of the testimony of two witnesses.

Q. What witnesses were those?

A. The cross-examination of S. H. Davis, and the direct testimony of John Wilds; part of each.

DAVID W. DAVIS.

Subscribed and sworn to before me this 17th day of April, 1872.

DON M. DICKINSON, *Examiner.*

THURSDAY, *April* 18, 1872, 9 o'clock a. m.

It is agreed by counsel that, in the absence of Mr. Dickinson, the commissioner, Mr. Henry A. Chaney, a notary public, may take the testimony of the following witness, Valentine T. MacGillycuddy.

Mr. Holmes appears for complainant. Mr. Kent appears for defendants.

VALENTINE T. MACGILLYCUDDY, a witness produced upon the part of the defendants, being produced and sworn, testifies as follows:

Q. What is your age?

A. Twenty-three.

312 Q. What is your occupation?

A. Physician, manufacturing chemist, and civil engineer.

Q. What is your residence?

A. 272 Brush street, Detroit.

Q. Have you examined the apparatus patented by William Davis and called the Davis refrigerator?

(Objected to by complainant's counsel as irrelevant and immaterial.)

A. Yes, sir.

Q. Will you look at Exhibit E, and see whether this is a model of the apparatus?

(Objection continued, it being stated by respondents' counsel that this witness is called as an expert to testify to the operation of refrigerators sold by S. H. Davis, and containing, as is alleged, the device for producing an internal circulation of air, for the purpose of preserving articles without freezing them. The complainants' counsel objects to the whole of the testimony of the witness as immaterial and not pertinent to the issue.

No objection to be taken to each separate question.)

A. It is.

Q. Will you explain the operation of this apparatus, stating each step in the manner of operating it, and the special advantages, if any, which it possesses?

A. The three principal causes of decay in animal and vegetable substances are air, heat, and moisture. I would explain the action of
313 the Davis refrigerator in preventing this decay, that it gets rid to a great extent of two of these causes, viz, heat and moisture, and to a considerable extent of the third, viz, air; and in the peculiar construction of the Davis apparatus there is a steady circulation of cold air unsaturated with moisture. This comparatively dry cold air, as it passes over the contents of the box, lowers the temperature of the contents, and at the same time abstracts a certain amount of moisture from them.

In lowering the temperature, or otherwise abstracting the heat from the substances, and also the moisture, the temperature of this air is raised, also saturated with moisture. This warm, moist air, on account of its lower specific gravity or weight, necessarily rises to the top of the box, it there passing, or being drawn over to the back of the ice-receptacle, and coming in contact with the walls of the same, which walls are lowered below the freezing-point by the contents of that receptacle, which is ice and salt, the temperature of that air is lowered, and on account of the temperature being lowered or diminished, the moisture which this formerly cold air had abstracted from the contents of the box, which contents may be any substance which you wish to prevent the decay of, is necessarily condensed or thrown down, and will be found on the surface of the ice-receptacle as frost or frozen water. The reason for this condensation is that air at any temperature, saturated with moisture, will always deposit a portion of that moisture on diminishing the temperature of the same. This air, which has now become comparatively dry and cold, will sink to the bottom of the box from behind the ice receptacle, and, passing away from beneath that ice-receptacle,
314 will become warm, and abstract a certain amount of moisture from the contents of the box, will rise and pursue the same course as before. This circulation and abstraction of moisture will necessarily continue as long as the walls of the ice-receptacle are lowered in temperature below that of the contents of the box.

This air circulation of air is essentially produced by the diminution in bulk, and thereby increased weight of the portions of air which pass over to the back of the ice-receptacle. This air, of course, being heavier, will, by the law of gravitation, naturally sink or fall in the efforts to form an equilibrium. This cold air falling or sinking at the back of the ice-receptacle has a tendency to form a vacuum at the upper portion or space

between the ice-receptacle and the side of the box. This vacuum will be naturally supplied by the warm, moist air which has accumulated at the top of the box.

An essential condition in the construction of these boxes is that there shall be a space between the top of the receptacle and the top of the box, and between the bottom of the receptacle and the bottom of the box, and that there shall be no open space between the end of the receptacle and the end of the box. This latter condition is necessary to prevent lateral circulation, which would prevent a thorough circulation. Evaporation can go on, no matter how low the temperature. There will never be a complete equilibrium; circulation will, therefore, always continue.

Q. State whether you have ever tried any experiments, or known of any such trial, with this Davis refrigerator, the operation of which you have been describing.

315 A. I have; I have tested it, first as regards this circulation and abstraction of moisture, and have proved that. For circulation, I have tested in this way: By suspending a piece of paper with light threads so as to cover to a certain extent the space between the lower end of the ice receptacle and the bottom of the box; this paper was suspended in such a manner as to allow a free motion similar to that of a pendulum. Within the distance of from half an inch to an inch from that paper I have placed a block of wood covered with molasses. On closing the box and charging the ice receptacle with ice and salt, then opening the box again at the end of a few minutes, I found that the draft of air produced by this circulation had drawn the paper against the block of wood, and the molasses held it there on account of its being sticky. This experiment I repeated several times, with the same result. To prove the abstraction of moisture from substances contained in the box, I have hung pieces of cloth or paper, moistened with water, and have found them, in a variable time, according to the proportion of ice or salt used in the ice receptacle, always to be dried. We have also in proof of this abstraction of moisture the continual condensation of moisture on the surface of the ice-receptacle in the shape of frost, which moisture must, of course, come from the contents of the box. In proof that this circulation of air and abstraction of moisture is necessary for the perfect preservation of the contents of the box above the freezing-point, I have sealed up, air-tight, in glass jars, both vegetable and animal substances, and placed them with similar substances—which latter substances were not sealed—in this Davis refrigerator, and have always found that

316 the articles placed in the air-tight jars would spoil or decay from want of this circulation and abstraction of moisture, while those articles left free and open in the box would not spoil.

Cross-examination, without waiving objections already taken by complainant's counsel:

Q. Did you ever test the temperature of the interior of the Davis refrigerator, of which you have spoken, when the receptacle was filled with ice and salt as you have stated?

A. I have.

Q. What was it?

A. I found it to vary according to the proportions of ice and salt used in the receptacle. I have not put in the ice and salt myself; they have put it in for me, but I have seen them put it in. I do not know the proportion of ice and salt.

Q. Was there ever as much as one-quarter salt to three-quarters ice, should you think?

A. I should think not. You gauge the degree of cold by the thermometer, not by the ice and salt. The proportion of ice and salt necessarily depends much on the weather, and in the number of articles in the chamber.

Q. In your experiments what was the lowest temperature?

A. About four or five degrees below the freezing point. I would like to explain, though, that this was not a test in regard to the preserving power of the box, nor of the lowest degree of temperature I might produce.

317 Q. Did you ever test the difference in temperature between the air at the top and at the bottom of the chamber?

A. I did not.

Q. Over how long a time did your experiments with this apparatus continue?

A. From about two and a half years ago up to the present time.

Q. What was the average temperature in the refrigerator during your experiments?

A. About six degrees above freezing, or thirty-eight degrees Fahrenheit.

Q. How long did any one experiment continue?

A. That's impossible to say; it depends upon the nature of the experiment.

Q. How long did the longest experiment continue?

A. About five months; it was on keeping fruit.

Q. What time of the year was this?

A. It commenced, I think, in April.

Q. What kind of fruit was it?

A. Lemons; grapes kept three or four months—till they were sold; peaches, a couple of months; strawberries, four or five weeks; and I would like to state that the capacity of the box to keep fruit was not tested to the utmost, because the fruit was sold.

(All after lemons objected to as irresponsive.)

Q. Where was the refrigerator with which you experimented kept?

A. Next to my house in Detroit.

318 Q. In whose establishment?

A. That of Davis & Co. Witness desires to add that, as an additional test to prove that the warm air at the upper portion of the box passed over back of the ice receptacle, I held a candle opposite, or in the spaces between the top of the ice receptacle and the top of the box, and found that the flame and smoke from this candle was drawn or blown over the top in the direction of the back of the ice receptacle.

(Objected to by complainant's counsel.)

Q. Have you ever examined the original patent of William Davis?

A. I am not familiar with the patents.

VALENTINE T. McGILLICUDDY, M. D.,
U. S. Lake Survey.

Subscribed and sworn to before me this 18th day of April, 1872.

HENRY A. CHANEY,
Notary Public, Wayne Co., Mich.

GEORGE H. HAMMOND, a witness produced upon the part of the defendants, being duly sworn, testified as follows:

Q. What is your age?

A. Thirty-three.

319 Q. What is your residence?

A. 135 Third street, Detroit.

Q. How long have you resided in this city?

A. Since 1854.

Q. What is your business?

A. Provision dealer in Detroit and shipper of beef by rail from Chicago to Boston.

Q. What kind of cars do you use?

(Objected to as immaterial, it being stated by respondent's counsel that the testimony of this witness will relate only to the use and construction and operation of refrigerating cars constructed according to the Davis patent, as alleged since the issue of that patent. Complainant's counsel objects to all the evidence sought from the witness as immaterial and not pertinent to the issue; and it is agreed that objection need not be taken to each question.)

A. The Davis refrigerator-car, constructed on the principle of Exhibit E.

Q. How long have you used these cars?

A. I have used them three years this month.

Q. How many of these cars have you used?

A. We had one from April, 1869, to September, 1869; then we had eleven from September, 1869, to May, 1870; then we have had twenty-one in the business since.

Q. How constantly have these cars been in use?

A. Continuously.

320 Q. Well, sir, how are the articles which are carried in these cars as compared with articles carried in ordinary cars when they reach Boston?

A. That depends a good deal on the weather.

Q. Say in the summer-time?

A. We never carry fresh beef in the summer time in ordinary cars, but in our cars they can be carried in perfect order.

Q. How long a time have you known beef to be preserved on these cars while in transit?

A. For thirty days.

Q. Was the beef in such cases preserved in good condition?

A. It was.

Q. How low a temperature is there in the receptacle of these cars where the beef is placed?

A. It varies. I have seen it at thirty-four degrees Fa'renheit; that is the lowest I have seen it. I have seen it at one hundred degrees; that is the highest I have seen it. The hundred degrees would be when it was not charged with ice and salt.

Q. How low a temperature is necessary for the preservation of the beef?

A. From thirty-four degrees to forty degrees.

Q. Has the beef you have carried in these cars ever been injured; and if so, from what cause?

A. It has. When these cars, the first ten after the first one, were added, the two first of these ten which were built, the carpenter
321 that fitted the inside rack fitted the board at the top of the car close to the receptacle, and stopped the circulation in part thereby. This board that was fitted in was the last thing that was put into the car to fasten the rack up to keep the beef from the receptacle. Those two cars were sent out immediately after being finished, and loaded with beef and sent through, and the beef moulded. We never examined those cars particularly, as we had others come right out and

loaded and the beef went through in perfect order. These two first cars, as they were the two first that we had sent through, we didn't know but they might have been neglected on the road. They came back, and we loaded them again. They went through with the same result. I wasn't satisfied myself what caused the difference. The next time these cars came back they were loaded, and I went through with them from Chicago to Boston myself, and when I arrived there the beef I found in a worse condition than before. In loading the car I took a good deal of pains, and was a-going to show them how nice I could carry the beef. The tongues were somewhat frozen when put in the car. I laid them on the bottom of the car close to the receptacle. After the car was loaded, when I arrived in Boston these tongues had thawed out, and had partly stopped the circulation from under the receptacle, and the mould on that beef was from two to three inches long. When we unloaded the beef I noticed these tongues laying in the bottom, and also the board fitted to the top of the receptacle. I took a chisel and cut out the board that fitted to the top of the receptacle, and kept the tongues away from the bottom, and since that time our beef has gone in those cars all right.

322 Cross-examination, without waiving the objection already taken

Q. You have spoken of the cars as your own; do you mean that?

A. I mean the cars we run; they are not our own.

Q. Whose are they?

A. I could not tell you, sir.

Q. Are they owned by a railroad company?

A. I couldn't tell you that.

Q. Who rents them to you?

A. We don't rent them of anybody; we pay freights same as anybody else.

Q. To whom do you pay freight?

A. To the Mich. Central, Great Western, New York Central, Boston & Albany; and we have paid freight to other roads.

Q. Do you pay separate freight to each of these roads?

A. No, sir.

Q. To whom do you pay freight?

A. We pay the freight to their agents in Boston—the same as any other freight.

Q. To whom do you pay freight in Boston?

A. The Boston and Albany agents collect it.

Q. Do you pay more than ordinary freight?

A. Generally, we do.

Q. Where were these cars made?

A. In Detroit.

323 Q. By whom and for whom?

A. They were built by the Detroit Car-Manufacturing Company; I couldn't say for whom. They were built for our use, but who paid for them I couldn't tell you.

Q. Did you order them?

A. Not of that company.

Q. Of whom did you order them?

A. I made the agreement with J. D. Hayes and J. B. Southerland.

Q. What is their business?

(Objected to by respondents' counsel as not proper cross-examination,

and because one of the avowed objects of the counsel is to ascertain who owns the cars, which is immaterial so far as this case is concerned.)

A. They have various business.

Q. Are they agents for any railroad company; and if so, what, and what is their address?

A. Mr. Hayes is general manager of the Blue lines and Mr. Southerland is master mechanic in the Michigan Central.

Q. Are you interested in the Davis patent and the business under it?

A. I have no direct interest in the patent; I do business under it.

324 Q. You have been here at the examination of witnesses almost all the time, have you not?

A. Yes, sir.

GEORGE H. HAMMOND.

Sworn to and subscribed before me this 18th day of April, A. D. 1872

DON. M. DICKINSON,
Examiner.

Adjourned to 2 o'clock p. m.

Mr. Holmes and Mr. Prentice for complainant; Mr. Kent for defendants.

THOMAS S. SPRAGUE, a witness produced on behalf of defendants, being duly sworn and examined, testified as follows:

Q. What is your residence?

A. Detroit City.

Q. How long have you resided here?

A. Nearly twenty-six years.

Q. What's your business now?

A. President of the Toledo, Thorntown and St. Louis Air-Line Railroad Company.

Q. You have been in the patent business?

A. For a number of years I have been acting as attorney in patent causes and as solicitor of patents.

325 Q. Were you acquainted with William Davis, the father of Samuel and David, in his life-time?

A. I was.

Q. When did you first get acquainted with him?

A. I first knew him in the latter part of summer of 1856.

Q. State his business at that time.

A. I don't know of my own knowledge, except what little business I did with him. I purchased from him, on the dock where the Sandusky boats landed in Detroit at that time, (I don't remember the owners of the dock,) some white-fish and a lake trout.

Q. State what time in the summer it was?

A. Not being positive, my impression is that it was in the latter part of August or early in September. I think, however, I made two purchases of him—one in the latter part of August and the other in September. This was the summer of 1856.

Q. What was the condition of the weather as to heat or cold?

A. I have no recollection that it was hotter than usually at that season; usually the hottest part of our year is in August and September.

Q. Were these fish you purchased just caught?

A. I was passing along the river-front looking for some fresh fish to use at home, and I found on the dock where the Sandusky

steamers landed a man putting fresh fish into a barrel. In handling them their ridgidity attracted my attention, and I entered into a conversation with the man, who proved to be William Davis, and
326 asked him how under the sun he got frozen fish at that time of the year. He said to me his business was dealing in fish, game, and fruits, and that he was compelled, in order to save and prevent loss during the warm weather, and when there wasn't a ready sale for his commodities, to freeze them, and showed me a box from which he was transferring fish to the barrel, with the remark that he fixed them in there. I asked him if there was any secret about it, to which he replied no, and took off the cover of the box. Exhibit B shows the nearest of anything I can see here. The box he showed me differed from this Exhibit B in having a cover not secured as this is; this is nailed on, but with flanged edges projecting down around the box, but with a hole through the top of it, so that where the cover was laid on the pipe would project upwardly through the hole. There was a woolen blanket that he spread over the top, underneath the cover, to make it fit more tightly, which he took off when he showed me the contents of the box. There was also a cap or cover that went on top of the pipe, after the main cover was in place, or put on, the pipe projecting up through the cover. When he opened the box there were a good many fish in there, principally white-fish; there were some trout; I don't remember how many; there were two or three, I know, because I handled them and selected one of them and took it home with me. I handled quite a number of the fish, and they all seemed to be rigid, frozen. I asked him what he was doing with those he was putting in the barrel; he was packing them with sawdust. He said they were going down on the boat to Sandusky, on their way to Cincinnati. At this time I purchased a white-fish and a trout.
327 This was the first time I saw him. Some two or three weeks after I met the same man, Mr. Davis, on the same dock, and made another purchase. Later in the season I met him on the street, and he said he had just removed to Detroit from Sandusky, where he had been residing. The box which he exhibited to me the first time I saw him on the dock had a pipe or tube running through it like this shown in this Exhibit B. The pipe terminated at the bottom in a small drip-pipe passing through the bottom of the box, and the box stood up on some pieces of timber, or blocks, set under the corners. The walls of the box were so thick that my attention was attracted, and I inquired the reason, and Mr. Davis replied they were double, and that the space between the two walls was filled so as to act as non-conductors. I remember asking him why that same plan wouldn't operate well in the construction of refrigerators for family use. He replied that the evaporation from moist articles, or, he said, from fish or meat, which would take place when the box was closed, would soon produce a foul air, which would militate against their successful use as refrigerators for family use. He said if he could get some way, by means of which a circulation of air could be had inside the box, by means of which the air as it became foul could be brought into contact with the outer surface of the pipes, so that the moisture would be congealed on the face of the pipe, he could preserve fresh meat in that box till doomsday. I remember the expression he used—till doomsday. "Now," he said, "I freeze, and then can preserve as long as I choose by keeping the temperature so low that the articles won't thaw."

(Answer objected to as irresponsive, and all conversations be-
328 tween the witness and Mr. Davis and all remarks of Mr. Davis further objected to as inadmissable.)

Q. What was there, if you know, inside the tube or cylinder?

A. I saw ice and salt in the tube.

Q. What connection, if any, between the interior of the tube and interior of the box?

A. Not any.

Q. How do you remember that this was in 1856?

A. It was the last year in which I kept house in Detroit until 1868, until I went to housekeeping again. I had a sister from New York spending the summer with me that summer, and these fish were bought more especially for her. She came in May and staid until about the first of October.

Q. For how long thereafter did you continue your acquaintance with said Davis?

A. Down to the fall of 1868—down to the time of his death.

Q. Intimately acquainted with him, were you?

A. Quite intimately for a number of years.

Q. Did you talk with him about his freezing-apparatus?

A. Frequently.

Q. Why didn't he get it patented?

(Objected to for form and substance.)

329 A. I should have to make a little recital. In all my conversation with him previous to the spring of 1868, I think in May, I failed to convince him that there was anything patentable about his box or process, for in almost every conversation I had with him he would almost always reply, "There is no more chance for a patent than there would be on a common ice-cream freezer." He said when he could so construct his refrigerator as to produce the circulation of air in the box without admitting air from the outside, or without ducts from the outside, then he would have something that would be valuable and patentable. I think in May he came into my office and said, "Sprague, I have got it."

(Answer objected to as immaterial and inadmissable.)

Q. You prepared, did you not, the affidavits for the defendants on the motion for the preliminary injunction?

A. I did.

Q. State the time you had to prepare them.

(Objected to for substance.)

A. From Wednesday afternoon, November 1, 1871, to the next forenoon, or about (24) twenty-four hours. On the first of November I received a telegram from Mr. Gifford, which said, "Suit is commenced here by Piper; notice served for motion for injunction next Saturday." I notified Mr. Davis immediately, and I telegraphed Mr. Gifford that it would be impossible to obtain many affidavits and get them to him by Saturday, and on the second of November, the next day, he telegraphed,

330 "Hearing motion is fixed for the eleventh instant;" and a subsequent letter from him after the affidavits taken on the fourth and sixth of November, said, "Get up all the affidavits as soon as possible, and send them down;" and they were all gotten up in great haste, under the spur that the case might be taken up any moment.

(Answer objected to as inadmissable and as stating contents of documents not produced.)

Cross-examination by Mr. Holmes:

Mr. Holmes. "The cross-examination is made without waiving any objections already taken."

Q. Did you obtain the patents of June, 1868, for Mr. Davis?

steamers landed a man putting fresh fish into a barrel. In handling them their ridgidity attracted my attention, and I entered into a conversation with the man, who proved to be William Davis, and
326 asked him how under the sun he got frozen fish at that time of the year. He said to me his business was dealing in fish, game, and fruits, and that he was compelled, in order to save and prevent loss during the warm weather, and when there wasn't a ready sale for his commodities, to freeze them, and showed me a box from which he was transferring fish to the barrel, with the remark that he fixed them in there. I asked him if there was any secret about it, to which he replied no, and took off the cover of the box. Exhibit B shows the nearest of anything I can see here. The box he showed me differed from this Exhibit B in having a cover not secured as this is; this is nailed on, but with flanged edges projecting down around the box, but with a hole through the top of it, so that where the cover was laid on the pipe would project upwardly through the hole. There was a woolen blanket that he spread over the top, underneath the cover, to make it fit more tightly, which he took off when he showed me the contents of the box. There was also a cap or cover that went on top of the pipe, after the main cover was in place, or put on, the pipe projecting up through the cover. When he opened the box there were a good many fish in there, principally white-fish; there were some trout; I don't remember how many; there were two or three, I know, because I handled them and selected one of them and took it home with me. I handled quite a number of the fish, and they all seemed to be rigid, frozen. I asked him what he was doing with those he was putting in the barrel; he was packing them with sawdust. He said they were going down on the boat to Sandusky, on their way to Cincinnati. At this time I purchased a white-fish and a trout.
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(Answer objected to as inadmissable and as stating contents of documents not produced.)

Cross-examination by Mr. Holmes:

Mr. Holmes. "The cross-examination is made without waiving any objections already taken."

Q. Did you obtain the patents of June, 1868, for Mr. Davis?

A. I did.

Q. Is Mr. Eberts (H. F. Eberts) notary public in your office?

A. Yes, sir; his commission as notary public came to him in the name of Frederick Eberts, and he so signs his official name. His name is H. Frederick Eberts.

Q. Please give the situation of the dock on which you saw the apparatus in 1856.

A. Really can't say the street; my impression is that it was between Griswold and Shelby streets.

Q. Whereabouts on this dock was this box?

A. There was a pile of wood that looked as though it was landed from some wood-scow for steamboat purposes, and this box stood upon four sticks of wood near that pile of wood; not in any building.

331 Q. Have you given an affidavit in this cause, and is the one now read to you the one to which you swore, as follows:

"Thomas S. Sprague, being duly sworn, deposes and says that he has resided in the city of Detroit and State of Michigan for the last twenty-five years; that he knew William Davis from the year 1856 until the death of said William Davis, in the year 1868; that in the year 1856 I bought frozen fish of the said William Davis on the De Garmo Jones dock, in the said city of Detroit. I bought them several times during the summer for use in my family. The said Davis explained to me how he froze the fish so as to prevent them from being salted in the operation. He (the said Davis) told me that he placed the ice and salt in a metallic receptacle, which was air-tight when closed, which was placed in a box, when filled with salt and ice, and closed. The fish were then placed in a box and against the outside of the metallic ice-receptacle, and the box closed. When the fish had been in there a sufficient time they were frozen stiff.

"THOMAS S. SPRAGUE.

"Subscribed and sworn to before me this 11th day of December, 1871.

"H. A. LACY,

"*Notary Public.*"

A. Yes, sir.

Q. Do you know where Mr. Davis' place of business was at that time when you bought the fish?

A. He told me that he resided in Sandusky, and that he came up on the Detroit River occasionally to buy fish at those seasons of the

332 year when they could not be obtained in the lakes, and that he had brought the box with him to enable him to take care of the fish when he got them.

Q. When is the catch of white-fish in Detroit?

A. Some years ago they were obtained in the river at all seasons of the year, except when ice was running; but in more recent years, I am told, there are less caught in the river than formerly. I don't know what the catch or season of fish was in 1857.

Q. In that box you saw on the dock was there a door in the side as in Exhibit B?

A. I think not; there might have been one. If there was it was closed. I did not notice any. I was not looking at the exterior.

Q. What time of the day was it when you saw the two barrels there?

A. I think it was in the morning as I came down from my breakfast, about eight o'clock.

Q. Where did you live in 1856?

A. Corner of Clifford street and Adams avenue—the whole year until May, 1857.

Q. Where from May, 1857, till May, 1858?

A. I boarded at Howard House.

Q. Where from May, 1858, till May, 1859?

A. The fore part of the year at the Howard House, and the latter part of the year with Mrs. Shackleton, on Randolph street.

Q. Where from May, 1859, till May, 1860?

A. With Mrs. Shackleton, on Washington avenue.

333 Q. Are you sure of these dates and places?

A. Yes, sir; I am.

Q. Did you not live on High street during the year 1859?

A. I boarded with a W. W. Davis, on High street, during the year 1858, and with the same family on Lafayette street during a part of the year 1859, when with my family, to live with Mrs. Shackleton, on Randolph street. I moved from High street to Lafayette street on May 1, 1859. Moving-time in Detroit is the first of May.

THOMAS S. SPRAGUE.

Subscribed and sworn to before me this 18th day of April, 1872.

DON M. DICKINSON,
Examiner.

Adjourned to April 19, 1872, at 9.30 a. m.

APRIL 19, 1872.—The counsel for the defendants announces that he has no further testimony to be taken before the examiner.

The following testimony was taken before me, an examiner appointed by said court, by consent expressed in my presence of George H. Prentis, esq., complainant's counsel, and of C. A. Kent, esq., defendants' counsel.

334 This testimony is taken with the express understanding and agreement between counsel that if complainant desires it he shall have ten days after all other testimony in Detroit or Columbus is closed to rebut it, and in case complainant shall take such ten days, then defendants are to have five days additional to put in testimony in rebuttal, or such proportion of said five days as complainant shall take of the said ten days; provided that defendants' time shall not be reduced below four days. This stipulation is not to be construed as limiting the time for taking testimony under the orders of the court, or extending it, except as provided in this stipulation.

TUESDAY, May 14, 1872.—Mr. Prentis appears for complainant and Mr. Kent for defendants.

AARON D. MITCHELL, a witness produced on the part of defendants, being first duly sworn and examined, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Aaron Mitchell; my age is forty-eight years, and I reside in Detroit, Michigan; I am a painter by trade.

Q. 2. Did you ever know William Davis, father of Samuel H. and David W. Davis; and if so, when and where?

A. I did; in 1857. I knew him on Jefferson avenue, in Detroit.

335 Q. 3. When did you first know him, and how long did your acquaintance continue?

A. Well, the first acquaintance was when he lived on Adams avenue; from that time until his death.

Q. 4. Where on Adams avenue did he live when you first knew him?

A. I think it was somewhere near Brush street. I don't know exactly where at this time.

Adjourned until 2 p. m.

TUESDAY, May 14th, 1872, 2 p. m.—Parties present by Geo. H. Printiss, esq., solicitor for complainant, and C. H. Kent, esq., solicitor for defendants. Examination resumed.

Q. 5. Where, if ever, did you first see fish artificially frozen?

(Objected to as leading.)

A. Mr. Davis brought some to me. I think it was about the first of March, in '57. He wanted that I should sell them, and I sold them on this market in Detroit. I sold them and went and got some more of him.

Q. 6. How many of these fish did you get of William Davis at that time, and sell?

A. From half a bushel to a bushel.

Q. 7. How much were they frozen?

336 A. Well, the first two or three lots were frozen so that they were brittle, and I could break them in two.

Q. 8. When you say you got from a half bushel to a bushel, do you mean the first lot, or all that you got?

A. Somewhere near half a bushel each time.

Q. 9. How many times did you get them?

A. I believe five or six times.

Q. 10. Where in Detroit did you sell them?

A. At the foot of the brick building, in the market.

Q. 11. Did you ever see the apparatus by which Mr. Davis froze these fish?

(Objected to as leading.)

A. I saw the box at the house that he took them out of, but did not examine it closely.

Q. 12. What house do you refer to, and where was it?

A. The Chapaton House, so-called, on Jefferson avenue near Beaubien street.

Q. 13. Who lived in that house at that time?

A. William Davis and family.

Q. 14. Describe this box as near as you can, and tell where it was placed.

A. As near as I can remember, the box was about four and one half feet deep, and between three to four feet square otherwise; in the shed or barn they kept it.

Q. 15. How often did you see this box?

A. I think I only saw it twice.

337 Q. 16. How did you come to see it then?

A. I went for fish.

Q. 17. Did you ever work for said William Davis; and if so, when and where?

A. I did; it was about the last of March, 1857, and I boarded there a few days with Mr. Davis, on Jefferson avenue. While I was there those few days he came from Adrian, where he had been selling fish, and said to me that he wanted that I should go there and sell in his place; and I went and sold fish in Adrian from a stand that he placed there on

the side of the street, next to the sidewalk. I was there from six to eight weeks, selling fish for him.

(All after the words "I did; it was about the last of March, 1857, and I boarded there with Mr. Davis, on Jefferson avenue," objected to as irresponsive to the question and immaterial.)

Q. 18. Where did Mr. Davis get the fish you sold in Adrian?

A. From Mr. Dibble; the fish were caught in Lake Erie.

Q. 19. How often did he receive fish then?

A. About once in two days.

Q. 20. Where did he keep them?

A. In the stand; there in the ice-box.

Q. 21. Describe this ice-box.

A. This box was from four to five feet long, two and a half feet deep, and about three feet wide, with two separate apartments, not con-
338 nected with each other; separate lids to each apartment, and a lid to cover both, and we locked it up nights.

Q. 22. Were the apartments of the same size or not?

(Objected to as leading. Question withdrawn.)

Q. 23. State the size of each of these apartments.

A. The partition in the box where we kept the ice and salt was about eight inches across one end of the box *eight inches across one end of the box;* the remainder of the box was where we kept fish.

Q. 24. What, if any, connections between these two apartments when the lids of each were closed?

A. There was no connection between them.

Q. 25. Who attended to this box?

A. Mr. Davis attended to it till I went there; after I went there I attended to it most of the time.

Q. 26. How many fish did you keep in the box at a time?

A. We usually put in about a barrel full.

Q. 27. Did you sell any fish not kept in this box?

A. Sometimes we sold them out of the tubs they were brought in.

Q. 28. How often did you renew the ice and salt in the apartment where it was kept?

A. Every night, when it was necessary.

Q. 29. How long at any one time did you keep fish in this box?

A. About three days was the longest.

339 Q. 30. What effect did it have upon the fish to keep them three days in this box when the ice and salt receptacle was kept charged?

(Objected to as irrelevant and immaterial.)

A. It had the effect to keep them good or preserve them; that is all. We usually sold them off before it was necessary to keep them any longer.

Q. 31. When did you go to Adrian on this business, and when did you come away?

A. About the very last of March or first of April I went there. I stayed there six or eight weeks, and then left.

Q. 32. Were you selling fish from this box all the time you were there or not?

A. Most of the time.

Q. 33. What was this box made of?

A. I think it was wood, lined with tin; between the tin and the wood I don't know what there was.

Q. 34. Whereabouts in the box did you put the fish?

A. In the large apartment.

Q. 35. Whereabouts in this apartment?
A. Upon a shelf which lay down near the bottom.
Q. 36. What formed the partition between the two apartments?
A. Tin.
Q. 37. Did you ever see any other box in Mr. Davis' possession used for the preservation of fish after leaving Adrian; and if so, when and where?
340 (Objected to as leading.)
A. None, except the first one described. That was moved over to Congress street, and I saw it there after I returned from Adrian.
Q. 38. Whereabouts on Congress street did you see this box?
A. It was back of the Congress Street Methodist church near there.
Q. 39. Who lived at the place where you saw it at that time?
A. William Davis and family.
Q. 40. Whereabouts at that place was this box kept?
A. In the barn or shed.
Q. 41. What year was it that you saw this box on Congress street?
A. 1857.
Q. 42. What year was it that you were at Adrian?
A. The same year.
Q. 43. What enabled you to recollect the year?
A. In a few weeks after I came from Adrian I was married.
Q. 44. Have you ever worked for Mr. Davis since you came from Adrian?
A. Not of any amount.
Q. 45. Have you ever worked for him at all, since 1857?
A. Different times I have hung wall-paper for him.

341 Cross-examined by Mr. Prentiss:

Q. 1. How long have you resided in Detroit?
A. About eighteen years.
Q. 2. What has your business been during all that time?
A. Some of the time I stood in the market selling vegetables and fish, and some of the time clerking a grocery store and dry-goods store; some of the time painting.
Q. 3. Give the years in which you have been engaged in these employments.
A. I think in '54, I clerked for Geo. B. Pease, in dry goods, a short time; I couldn't say whether it was in '54 or '55; somewhere about there. I was painting afterwards. I think in '56 I clerked for E. A. Drury; then, I think, I painted awhile. I can't say how long I was in either of these jobs; I can't fix the dates. I clerked for L. J. Staples, but I can't fix the date of that. Then I painted awhile, and clerked for L. C. Kneeland, corner of Sixth and Grand River street; can't fix the date of that. I have been painting most of the time since.
Q. 4. Can't you give anywhere near the year you left Kneeland's?
A. Somewhere between the years 1860 and 1870; that is as near as I can get it now.
Q. 5. Where have you been painting since that time?
A. In the city and at Lookout Mountain, Tenn.
Q. 6. How long have you been painting at Lookout Mountain?
A. About three months.
Q. 7. How long were you in Tennessee?
342 A. A little over eleven months—between eleven and twelve.
Q. 8. What were you doing the rest of the time?
A. Carpentering part of the time and general business on a farm.

Q. 9. When did you go there and when did you leave?

A. About the 8th of May, 1871; I left the 30th of April, 1872, when I came back to Detroit.

Q. 10. Where was your family while you were at Lookout Mountain?

A. I left them on Mount Hope avenue, in Detroit; my wife has spent part of the time in Dexter, Mich., with my cousin; she remained there until a week before I came back; she came back at that time and went to her sister's; when I came I found her on the Gratiot road, at Squire Mack's; I have no children; now we are living at home on Mount Hope avenue again.

Q. 11. Have you been out of Detroit since you left Kneeland's, except to Lookout Mountain?

A. I have not.

Q. 12. Where and by whom were you married?

A. At Mr. John Doty's, on Adams avenue, Detroit; I was married by Rev. A. J. Eldredge, on the 22d day of July, 1857.

Q. 13. When did you learn the painter's trade, and where?

A. I didn't serve a regular apprenticeship at any one time; I first
343 painted my father's house and different houses, and then I went to paint for Godfrey & Dean on boats in the city; from that time I painted more or less at different times along up to this time.

Q. 14. What year did you go to painting for Godfrey & Dean?

A. I can't find the date.

Q. 15. Was it prior to 1860?

A. It was.

Q. 16. How many years prior?

A. I couldn't say.

Q. 17. What was the first thing you did after you came back from Adrian?

A. Standing on the market, for myself, I think it was.

Q. 18. How long did that continue?

A. Till about the first of August.

Q. 19. What stand did you have on the market?

A. I had my hand-cart and stood where I had a mind to.

Q. 20. Did you have any license, and if so, from whom did you get it?

A. I did not; there was none needed.

Q. 21. What did you sell on the market?

A. Vegetables.

Q. 22. Where did you obtain them?

A. In the market.

Q. 23. What time did you commence to thus sell on the market

344 A. As soon as I came back from Adrian; about the last of June.

Q. 24. What were you doing immediately before you went to Adrian?

A. Selling on the market; vegetables.

Q. 25. How long had you thus been employed?

A. I think all winter very nearly.

Q. 26. From your hand-cart or a stand?

A. I had a hand-cart.

Q. 27. What vegetables did you sell?

A. Potatoes, cabbage, parsnips, turnips, carrots, onions; I think I had a few cranberries.

Q. 28. Had you any place of business?

A. No.

Q. 29. Where did you then live?

A. No. 10 Clinton street.

Q. 30. Did you keep house or board?

A. Kept house at No. 10 Clinton street; that was the number then, and is the present number.

Q. 31. What year and what month was this that you speak of above as being at 10 Clinton street?

A. This was in March, 1857; my first wife was then living: I forget whether it was the 3d or 23d of March that she died; after she died I went to board with Mr. Davis.

Q. 32. Was this your first acquaintance with Mr. Davis?

A. I had been acquainted with him a short time.

345 Q. 33. Where did Mr. Davis live when you first went to board with him?

A. On Jefferson avenue, near Beaubien street, in a frame house on the north side.

Q. 34. What kind of fish were these that you sold?

A. These in Detroit, were perch and sun-fish; in Adrian, they were pike and perch and bull-heads, and a few sheep-heads, and one sturgeon, and some cat-fish; there were some pickerel.

Q. 35. How was the box, that you first saw, made?

A. I didn't examine it closely; I merely know the size of it.

Q. 36. How long did you live at No. 10 Clinton street?

A. Can't tell; I was off and on nearly three years.

Q. 37. What do you mean by being off and on?

A. I lost my first wife there, and moved away, and then I moved back there after I married my second wife; I don't know how long after.

Q. 38. How long did you live there before your first wife died?

A. I don't know exactly; somewhere near ten years.

Q. 39. What kind of a shed or barn was it that the box stood in, on Jefferson avenue?

A. It was made of common boards, covered with shingles, I believe it was.

Q. 40. Was it attached to or detached from the house?

A. I am not certain.

Q. 41. What kind of a shed or barn was it that the box stood on Congress street?

346 A. A common board shed or barn; I don't now recollect whether it was built shed or barn fashion.

Q. 42. Was it attached to or detached from the house?

A. Couldn't say.

Q. 43. Did you board with Mr. Davis, on Congress street; and if so, for how long?

A. I did, but for a few days; I think about a month.

Q. 44. Was this before or after you went to Adrian?

A. It was after I came back from Adrian.

Q. 45. Was it before or after you went to Adrian, that you boarded with Davis on Jefferson avenue?

A. Before I went to Adrian.

Q. 46. How long did you board there on Jefferson avenue?

A. Somewhere about a week or ten days.

Q. 47. On what street in Adrian did you have your stand, and whereabouts?

A. I don't know the street, but the box stood on the edge of the street, up against the sidewalk.

Q. 48. In what direction did the street run, east and west, or north and south?

A. I don't remember.

Q. 49. How long were you in Adrian altogether?

A. I was only there that one time; I don't remember how many weeks it was exactly; somewhere about six or eight weeks.

Q. 50. How and from where were the fish shipped to you at Adrian?

347 A. By rail from Monroe, I think, they shipped them.

Q. 51. How near to the depot was your stand in Adrian?

A. Couldn't say.

Q. 52. How large a place was Adrian at that time?

A. It was quite a village; I don't know how many inhabitants it had at that time.

Q. 53. Were there as many as ten thousand inhabitants?

A. Could not say.

Q. 54. Were there less than three thousand inhabitants?

A. As to that, I could not say.

Examination adjourned to Wednesday morning, May 15th, 1872, at 9 a. m.

May 15th, 9 a m.; parties present by their said counsel; cross-examination resumed:

Q. 55. Where and by whom were you married the first time, and when?

A. Near the corner of Hastings and Gratiot streets, in Detroit, by Squire Spencer, in February or March, I forget which, 1854, I think it is.

Q. 56. Were you on the market from the time of the first marriage until the death of your wife?

A. I was not.

Q. 57. For how long were you on the market?

A. I couldn't say; I might have been six months.

348 Q. 58. Where did you first get acquainted with William Davis?

A. At Mr. Drury's store, I think, it was; I can't say exactly; it was in the city of Detroit, at all events.

Q. 59. Where did you board at Adrian?

A. At the hotel; I think it was the Farmer's Hotel; I don't know the name of it exactly now.

Q. 60. Who kept it?

A. That I don't know.

Q. 61. Who did you sell fish to in Adrian?

A. To the inhabitants there; also wholesale to Mr. McKinstry.

Q. 62. Is that as definite an answer as you can give to the last question?

A. That is.

Q. 63. Where did Mr. McKinstry live then, and where is he now?

A. It is more than I can tell where he is now; at that time, I believe, he lived in Adrian.

Q. 64. What was his business?

A. Selling fish as far as I know of.

Q. 65. Where did the fish that you sold him come from, and how did they come, and where did you keep them after they arrived in Adrian?

A. They came from Mr. Dibble, I think it was; they came by rail; we kept them in the tubs in which they came; I said Mr. Dibble, but I think Mr. Davis sent them to me.

349 Q. 66. Was there any ice in the tubs with the fish when they came?

A. I don't remember about the ice, how it came; I don't remember whether or not there was any ice in the tubs.

Q. 67. To whom did you sell any of the fish out of this box?

A. I don't remember any one particularly; to the inhabitants generally.

Q. 68. Can you give the names of any of the business men in Adrian at that time?

A. I cannot.

Q. 69. Can you give the names of any of the inhabitants at that time?

A. I cannot.

Q. 70. On what street was the hotel where you boarded?

A. I don't remember.

Q. 71. Was it a frame or a brick building?

A. Don't remember.

Q. 72. Was the street, where you had your box, paved or not?

A. I don't remember.

Q. 73. When and by whom was this Adrian box made?

A. Can't tell; it was there when I went there.

Q. 74. Did you do anything except the fish business in Adrian?

A. I bought eggs, and packed them and shipped them; that's all.

350 Q. 75. Who did you buy eggs from?

A. From the farmers on the streets. I think no one else.

Q. 76. How many fish-dealers were there in Adrian at that time, and what were their names?

A. Don't remember of any other except McKinstry.

Q. 77. Did McKinstry get all of his fish from you; if not, from who else?

A. I don't know whether he got them all from me or not.

Q. 78. Did you get your ice in Adrian; if not, where did you get it?

A. Mr. Davis furnished it; that's all I know about it. I don't know whether it was got in Adrian or not.

Q. 79. Was Mr. Davis with you in Adrian all the time?

A. Only a part of the time.

Q. 80. How much of the time?

A. He might have been a quarter of the time; I don't know exactly.

Q. 81. Did you have entire charge when Mr. Davis was not there?

A. Yes; no one was with me.

Q. 82. Where did you get the ice from when Mr. Davis was not there?

A. I think it was in the building back of me.

Q. 83. What building was that?

A. I think it was a store; not certain now about it.

Q. 84. Who occupied that store?

351 A. Don't remember.

Q. 85. What business was carried on there in that store?

A. Don't remember.

Q. 86. Who did you leave attending to the business when you came away?

A. No one.

Q. 87. How did the fish you received at Adrian come to you, and in whose name?

A. By rail, and in Mr. Davis' name—by express from Monroe.

Q. 88. How did you go from Detroit to Adrian when you went?

A. By rail, by the Adrian road. I think I went all the way from Detroit by rail; I almost forget about that; I am not really certain but I went by Samuel Davis' boat, a little sail-boat.

Q. 89. How did you return?

A. I think that was by rail.

Q. 90. Who went with you, and who came back with you?

A. Not certain who went with me; I came back alone.
Q. 91. Was there a market in Adrian at that time?
A. Not a regular established market that I remember of.
Q. 92. What do you mean by a regular established market?
A. The same as we have here in Detroit.
352 Q. 93. Question repeated.
A. I can't answer it any different.
Q. 94. Did you have any place of business in Adrian, except the box you have already mentioned?
A. None.
Q. 95. How did you get your fish from the depot to the box?
A. By dray.
Q. 96. Who carted them?
A. I don't know.
Q. 97. Did you sell any fish in Detroit after you returned?
A. No.
Q. 98. Can you give any of the public buildings in Adrian which were there in 1857?
A. No, I didn't own any of them.
Q. 99. How often did you receive fish?
A. I think it was once in two days.
Q. 100. In what quantities?
A. From three to half a dozen tubs, according as they caught them.
Q. 101. What was the size of these tubs, and how were they made?
A. Half barrels—a barrel cut in two.
Q. 102. Open or covered?
A. Open.
Q. 103. Where did you live and what were you doing in 1858?
353 A. Can't readily call it to mind; that's all I distinctly remember about it.
Q. 104. What were you doing at the time of your second marriage?
A. I was standing on the market; also sexton in the Congress street Methodist Church.
Q. 105. Where did you then live?
A. On Elizabeth street, in Mr. Higgins' house.
Q. 106. How long did you continue to stand on the market, and what did you sell?
A. Don't remember how long; I sold vegetables.
Q. 107. Did you ever stand on the market in Detroit more than one time, and if so, when?
A. I did, but don't remember when; can't give the year.
Q. 108. What, if any, church did you attend in Adrian?
A. I think it was the Congregational.
Q. 109. Whereabouts was it, and what kind of a building was it?
A. In Adrian; I can't locate it; I can't describe the building; can't say whether it was wood or brick.
Q. 110. How often did you attend church?
A. Only on the Sabbath.
Q. 111. Did the fish go from Detroit or not?
A. Did not; they went from Monroe by express.
Q. 112. What did you do with the box nights?
354 A. Locked it up and left it on the street or on the side of the street.
Q. 113. How many pounds of ice did you use per day when Mr. Davis was not there?
A. I don't know.

Q. 114. Can not you approximate to it?
A. I cannot.
Q. 115. How much salt did you use?
A. Not much; I don't know how much.
Q. 116. Where did you get the salt?
A. Mr. Davis furnished it.
Q. 117. I mean where did you get it when Mr. Davis was not there?
A. It was there; he furnished it.
Q. 118. In what quantities did he furnish the salt to you?
A. In small quantities; didn't use but little; I think there was a part of a barrel stood there and we took what was necessary.
Q. 119. Was there ever more than that one part of a barrel there?
A. Not that I know of.
Q. 120. What did you do with the fish when you received them from Monroe?
A. Sold them to the inhabitants there, and what I wholesaled to Mr. McKinstry, and what I had over I locked up in the box every night.
Q. 121. At what time of day did you receive your fish?
355 A. I don't remember whether it was in the forenoon or afternoon.
Q. 122. How many of the six tubs which you received did you usually sell the day you received them?
A. Don't remember.
Q. 123. If you had three or four tubs left over night what did you do with them?
A. Put them in the box and locked them up.
Q. 124. How many fish did you keep in the box at a time?
A. Not more than three tubs usually.
Q. 125. On direct examination in answer to a question by Mr. Kent—how many fish did you say you usually kept in a box?
A. From one to three tubs of fish. (Upon repeating the question by Mr. Kent, witness says:) I don't remember that any such question was asked by Mr. Kent.
Q. 126. How many barrels would these tubs make?
A. Nearly a barrel and a half, I should judge.
Q. 127. What did you do with the tubs?
A. Sent them back to Munroe.
Q. 128. Where did you keep them until you did send them back?
A. At the stand usually, or sent them to the depot.
Q. 129. Did you deliver them to the railroad employees; if not, to whom?
A. To the drayman.
356 Q. 130. What, if any, instructions did you give the drayman in regard to them?
A. He had his orders from Mr. Davis.
Q. 131. What did Mr. Davis pay you as your wages?
A. I don't remember.
Q. 132. How did he pay you, by the month or by the day, or how?
A. Don't remember about that.
Adjourned until 2 p. m.

2 p. m.—Examination resumed:
Q. 133. Did you have the box in Adrian at more than one place there?
A. I did not.
Q. 134. Did Mr. Davis come with you when you came home from Adrian, or did you leave him there?

A. He did not come with me; I don't remember where he was at that time when I came back.

Q. 135. Who, if any one, did you leave there to take charge of the business or the property there?

A. No one; I locked the box up and left it there.

Q. 136. Was there anything in it?

A. Nothing.

Q. 137. What became of that box?

A. I couldn't say.

Q. 138. Did you have any license to do business in Adrian?

357 A. I did not.

Q. 139. How large was the ice-receptacle in this box at Adrian?

A. About eight inches in width across the end of the box.

Q. 140. (Question repeated.)

A. I should think it was nearly three feet long, two and one-half feet deep, and about eight inches wide, I should think.

Q. 141. How often did you fill this receptacle, or renew the salt and ice in it?

A. About once in twenty-four hours, or every night.

Q. 142. How much ice and salt did it take to do this each time?

A. Usually about half a bushel of ice and a few handsful, may be a quart, of salt.

Q. 143. Were the fish frozen when you received them in Adrian?

A. They were not.

Q. 144. Did you freeze them after you received them?

A. No; I did not freeze them, but just preserved them over night with this ice and salt; we sold them out readily; that is, I mean within three days.

Q. 145. Where did you go when you came back from Adrian; I mean where in the city of Detroit, and what did you work at?

A. To William Davis', on Congress street, and I went to work on the market, selling vegetables.

358 Q. 146. How long did you continue there?

A. Don't remember how long I continued on the market; I stayed at Davis' until after I was married, which was July 22, 1857.

Q. 147. Have you given all the description you can of that box?

A. I think I have.

Q. 148. Can not you tell what it was made of?

A. I think it was a wooden box lined with tin; I can't tell what kind of wood.

Q. 149. Can you tell whether it was made of inch or two-inch or three-inch lumber?

A. I think it was one-inch lumber.

Q. 150. Why do you think so?

A. From the appearance of the box; where the lids shut in was a little jog for the lids to fit in.

Q. 151. Were not the sides of the box more than an inch thick?

A. I think they were; I should think they were the thickness of two-inch boards, and probably a little space between; I don't know whether there was any space between them; they were covered with tin.

Q. 152. Can not you, then, tell whether the sides were made of inch boards doubled or of two-inch plank?

A. I should judge of inch boards; I cannot tell at present.

Q. 153. Did not Mr. Davis explain to you this box, and his method of using it?

359 A. He merely told me how to use it, which was to put the fish

in the box in the large apartment, salt and ice in the smaller apartment, at night closing the lids; lock up and go to bed.

Q. 154. Did you say, in answer to question number 35, by Mr. Kent, that you kept all the fish on a shelf in the large apartment?

A. I did—what I had in the box; we kept some in the tubs sometimes.

Q. 155. What kind of a shelf was this, and which way of the box did it run?

A. An inch slab shelf, running lengthwise.

Q. 156. How wide was it and how long?

A. The entire width of the inside of the box; I don't recollect exactly how long or how wide this shelf was, only it covered the bottom of the large apartment.

Q. 157. How near to the bottom was this shelf?

A. I should judge two or three inches from the bottom.

Q. 158. Did you place the fish on any particular part of it, or all over it?

A. At night, when I closed up, if I had but a few remaining, I packed them up to the partition; when I had a good many I let them lay all over the shelf just as they were thrown in.

Q. 159. Describe the house and premises on Congress street where Mr. Davis lived.

A. It was a three-story brick, with a grocery store, I think,
360 in the lower story, with a small barn or shed on the back part of the lot; Mr. Davis' family occupied the two upper stories; I think there was a stoop on the back part of the second story.

Q. 160. Was the barn or shed brick or wood?

A. I think it was wood.

Q. 161. How far from the back end of the brick building or house did it stand?

A. I don't know how many feet it was at the back end of the lot.

Redirect:

Q. 1. How do you fix the date of your second marriage?

(Objected to as incompetent, irrelevant, and immaterial.)

A. From my marriage-certificate, that I kept ever since.

Q. 2. Will you produce this certificate and let the commissioner copy it into the testimony?

A. I will; here it is.

(Counsel for complainant objected to a copy of the certificate being put in evidence, for the reason that the original is produced by the witness, and that is the best and proper evidence; also on the ground that it is incompetent, irrelevant, and immaterial.)

Witness consenting, the counsel for the defendants offers the original certificate in evidence, and it is hereto attached and marked Exhibit Z.

361 (Objection continued.)

Q. 3. Were you ever in Adrian before you went there in 1857 or since 1857?

A. Not that I remember about.

Q. 4. Were you on the market in Detroit more than once during the year 1857?

A. I was on the market in '57 at the time my first wife died, and then when I came back from Adrian I went on the market again.

After hearing this evidence read over witness desires to correct the answer to cross-interrogatory 23, and says that it was about the last of

May or first of June that he came back from Adrian and commenced standing on the market; and also to his cross-interrogatory 105, and says, I lived on Elizabeth street after my marriage; before that I lived with Mr. Davis.

Cross-examination resumed:

Q. 1. Was Mr. Davis at home when you came back from Adrian and went there to live?

A. I don't remember.

Q. 2. Who was your first wife; what was her name, and where did her family live?

A. Her name was Ellen F. Dailey; both her father and mother were dead; her sister, Mrs. Cahill, lived on Mt. Clemens road; I think she lived at the same place, but don't know.

Q. 3. Where was your wife buried?

362 A. In the Catholic cemetery, Detroit, from the Jefferson avenue cathedral.

Q. 4. Who moved into No. 10 Clinton street when you moved out after your wife died?

A. I don't know.

Q. 5. Who moved out when you moved in again after your second marriage?

A. I don't know that.

Q. 6. Where was the Express Company's office in Adrian?

A. I don't know.

Q. 7. Did the same drayman that brought you the fish take away the empty tubs?

A. I think he did.

Q. 8. Is there any lake or river at or near Adrian where fish can be caught?

A. Not that I know of; I don't know of any lake or river at or near Adrian.

Q. 9. Is there any water there at all?

A. I don't know.

Q. 10. Was the railroad built from Detroit to Monroe when you went to Adrian in 1857?

A. I think it was a cross-railroad from Jackson to Adrian, and thence to Monroe, connecting with the Michigan Southern.

Q. 11. Was that the way you went from Detroit at that time?

A. I think I went from Detroit to Monroe by the Michigan Southern.

363 Q. 12. Question 10 repeated.

A. I think it was.

Q. 13. What else than the box was there in the barn or shed back of Davis' house on Congress street?

A. Wood; nothing else that I remember.

AARON D. MITCHELL.

Subscribed and sworn to before me.

DON M. DICKINSON, *Examiner.*

Further hearing adjourned to Friday, May 17, at 9 a. m.

MAY 17, 1872.—Further examination adjourned to Saturday morning, May 18, 1872, at 9 a. m.

MAY 18, 1872.—9 a. m. Mr. Kent appears for defendants, and Mr. Prentiss for complainant.

HELLEN SPILLANE, a witness produced and duly sworn on behalf of defendants, being examined, testifies as follows:

Q. 1. Where do you reside?

364 A. 94 Abbott street, Detroit.

Q. 2. How long have you resided in Detroit?

A. To the best of my knowledge, 35 years.

Q. 3. When, if ever, did you live on Adams avenue west, near Woodward avenue?

A. I lived all the time from 1853 till we moved away, in 1856. To the best of my recollection we moved there previous to 1853, because my second oldest son was born there in that house, No. 10 Adams avenue.

Q. 4. Who was your next neighbor, on the east side, at that time?

A. Mr. Holbrook, I think.

Q. 5. When did you move out of that house?

A. To the best of my knowledge and belief, I think it was in November, 1856.

Q. 6. What makes you think so?

A. Because my second oldest son was born in 1853, and my third oldest boy was born in '55—the 21st of December, 1855—and we moved out the following November, which would make it 1856, to the best of my knowledge, that is.

Q. 7. Who owned the house at that time you lived in it?

A. My husband.

Q. 8. Who lived in the house immediately after you moved out?

A. Mr. Davis, I believe; to the best of my knowledge and belief, we moved out to let him move in.

365 Q. 9. Was the Mr. Davis you mean the father of Samuel H. and David W. Davis?

(Objected to as leading.)

A. I don't know but the Mr. Davis; I don't know any of the boys; they were young boys then; they have grown up since then; I think Mr. Davis had three boys then; Mr. Davis told Mr. Spillane in my presence that his business was dealing in the market in fruits and fish, as far as I recollect.

(Objection by Mr. Prentiss to all the answer after "I don't know this Mr. Davis, (Samuel H.;) I don't know any of the boys;" as being irresponsive to the question.)

Q. 10. How long did Mr. Davis live in this house at that time?

A. I couldn't positively say; I have no recollection; he gave up the house to Mr. Spillane; he said it was too small.

(Objection by Mr. Prentiss as to what Davis said as irresponsive.)

Q. 11. Of what persons did the family of Mr. Davis at that time consist?

A. I don't know, for I was not acquainted; I was invited to call and see them, but I have no recollection of calling.

Cross-examined by Mr. Prentiss:

Q. 1. Did you move back into that house after Mr. Davis went out?

A. No, sir.

366 Q. 2. What did you mean by saying that Mr. Davis gave it up to Spillane?

A. He gave the key up to him—that he wouldn't keep the house any longer; he told Mr. Spillane that it was too small for his family.

Q. 3. Were you present when he gave Mr. Spillane the key?

A. To the best of my knowledge I think I was; I am not positive.

Q. 4. Where was it that he gave Mr. Spillane this key?

A. To the best of my knowledge it was First street, where we were living.

Q. 5. Who went into that house next after Mr. Davis left?

A. I think, to the best of my knowledge, it was Mr. Adams, a dry-goods man.

Q. 6. When did he go in, and how long did he stay?

A. I could not say; to the best of my knowledge, Mr. Adams went in the next spring; the house remained idle some time; it was in cold weather, and Mr. Davis gave it up in the winter time; I don't know whether it was two or three weeks or not that the house was idle; I don't know how long Mr. Adams stayed; I have no recollection.

Q. 7. Were you present when Mr. Davis rented the house?

A. I think I was in the bed-room putting the children to bed when Mr. Spillane made the arrangements in the dining-room; I have no recollection of being present.

367 Q. 8. How many years did you live on Adams avenue?

A. I couldn't positively say.

Q. 9. Can't you give anywhere near whether it was 3, 5, 10, or 15 years?

A. I think, to the best of my knowledge, it was three years; from '53 to '56.

Q. 10. Did you not remove into that house before '53?

A. I couldn't positively say whether in '53 or before '53.

Q. 11. What month did you move in?

A. I couldn't positively say what month, it is so long ago and having so much trouble.

Q. 12. When and where was your oldest boy born?

A. He was born, I think, in '52, to the best of my knowledge, on Michigan avenue, on the corner of Washington avenue, in Detroit.

Q. 13. What month?

A. The 9th of September.

Q. 14. What month did you move to Adams?

A. I don't remember.

Q. 15. Was it after your oldest boy was born?

A. Yes, sir.

Q. 16. Can you tell whether it was spring, fall, summer, or winter?

A. No, sir; I couldn't say.

Q. 17. Whose house did you move into when you left Adams avenue?

368 A. Moved into a house on First street which Mr. Spillane bought or contracted for it the summer before he moved in.

Q. 18. Were you there when Mr. Davis moved into the Adams avenue house?

A. I couldn't positively say; I have no recollection.

Q. 19. Have you ever seen any of Mr. Davis' sons since then; and if so, when and where?

A. Yes, sir; used to see them in the market, a year or two after they rented the house.

Q. 20. Have you talked with any person lately in reference to Mr. Davis living in that Adams avenue house in 1856?

A. No, sir. I think Mrs. Stow was at our house, and I asked her about it.

Q. 21. Have you talked with David W. Davis about it?

A. Well, there was a gentleman came to my house two or three weeks ago and asked me if I recollected renting to Mr. Davis, and I recog-

nized the name and asked him how his father was, and he said he had been dead four or five years, I think.

Q. 22. What did he say to you about Mr. Davis occupying that house in 1856?

A. He asked me if I recollected the year that Mr. Davis (his father) rented that house. I told him that I could refer back to the age of my third oldest son, and that would give me the year he rented it of me. He said he wanted me to give my evidence if I recollected the year in which he rented. He told me he wanted me to testify to the truth
369 and nothing but the truth. He asked me, I think, if I recollected them having a temporary shed there, and I don't recollect as I did tell him that I recollected about it. Nothing else was said about occupying the house, that I recollect about, by either of us.

Q. 23. Did you refer back at that time and tell him what year it was?

A. I can't say whether it was that time or the next time he called.

Q. 24. Did you look at any paper to see when your third oldest son was born?

A. No, sir; I distinctly recollect the year he was born. I looked at the paper to see the year that we got a deed of the lot on Adams avenue.

Q. 25. Was that the way you refreshed your memory as to the time when Davis lived there?

A. Yes.

Q. 26. What year was it that you got the deed?

A. '53, to the best of my knowledge.

Q. 27. What did he say to you about what month it was that he went in?

A. I couldn't positively say whether he mentioned the month. I think he said November, but I couldn't positively say whether he said it or I said it.

Q. 28. There has been considerable talk about the matter within the last few weeks, has there not?

A. Not that I know of, sir. I have only talked with three persons about it. I can't be positive if it was more than three.

370 Redirect by Mr. Kent:

Q. 1. What do you remember about a temporary shed left when Mr. Davis moved out of the house?

(Objected to as leading, irrelevant and incompetent.)

A. I recollect of going back there after they moved out—going to look at the house; that there was a shed there; I couldn't recollect what kind it was. I know it was put up by Mr. Davis' house, because it was not there when we left.

Recross-examination:

Q. 1. When was this that you went back there?

A. I do not know. It was after they moved out. It was before the house was rerented, I think, to the best of my knowledge.

HELLEN SPILLANE.

Subscribed and sworn to before me this 18th day of May, 1872.

DON M. DICKINSON, *Examiner.*

Adjourned by consent of counsel to Monday, May 18, 1872, at 9 a. m.

MAY 18, 1872, 9 a. m.—Present, Mr. Prentiss for complainant; Mr. Kent for defendants.

GEO. W. HECTOR, being duly sworn, deposes and says:

371 Q. 1. What is your name, age, residence, and occupation?

A. George W. Hector. I was thirty the 20th of December last. I reside at the corner of Lafayette and Hastings streets, Detroit. I handle horses for a living.

Q. 2. Are you acquainted with Samuel Barlin?

A. Yes, sir.

Q. 3. When and where did you first get acquainted with him?

A. I first got acquainted with him in the fall of 1856, in Detroit.

Q. 4. What were you doing at that time?

A. I was working for Charles Shippay, corner of Lafayette and Shelby streets.

Q. 5. How much did you see of Samuel Barlin at that time?

A. I used to see him occasionally.

Q. 6. Where did you see him?

A. I believe the first time I saw him was at church; at the colored Methodist church, on Lafayette street.

Q. 7. Where else did you see him?

A. He used to come where I worked.

Q. 8. How well did you know him then?

A. I was with him nearly every day for a month or so.

Q. 9. Are you acquainted with him now?

A. Yes, sir.

372 Q. 10. How do you know that it was in the fall of 1856 that you first knew him?

A. I went to work for Mr. Shippay in the spring of that year. Mr. Shippay was a democrat, and men used to come in the office and talk about politics and about Buchanan's election.

Cross-examined by Mr. Prentiss:

Q. 1. Who are you working for now?

A. Not anybody at present.

Q. 2. Who did you last work for, and when?

A. Mr. McGonnegal, last week.

Q. 3. How long did you work for McGonnegal?

A. About four weeks.

Q. 4. Who before that, and how long?

A. Mr. Alexander, for three months; Archibald Alexander, a lumberman. He lives in Midland City, Mich.

Q. 5. Who before Mr. Alexander?

A. I kept a breaking-stable on my own hook in Detroit from the 4th of July, 1871, up to January, 1872.

Q. 6. What were you doing before that?

A. I was at work for Capt. J. W. Keith. I worked for him three years.

Q. 7. When did you commence to work for him, and when did you quit?

A. I think, I couldn't say positively, that it was in July, 1869. It was four years ago last July. I quit a year ago last January. It was in 1871.

373 Q. 8. Who did you work for before that, and when?

A. I worked for Henry Kibby. I went to work for Capt. Keith when I quit Henry Kibby. I commenced to work for Mr. Kibby four years ago last spring. It was in the spring of 1868. I quit in July of the same year.

Q. 9. Who did you work for before that?

A. I lived in Ann Arbor before that.

Q. 10. What year did you go to Ann Arbor, and what year did you return?

A. I went to Ann Arbor in 1865, and returned in 1868.

Q. 11. What did you do before you went to Ann Arbor?

A. I was in Saginaw, working in the Everett House barn.

Q. 12. What year did you go there, and what year did you return?

A. I can't say positively what year I went there. I returned in 1865, at least I went to Ann Arbor in 1865. From the time I left Saginaw until the time I went to Ann Arbor was about five months, which I spent in Detroit and Canada.

Q. 13. Can you tell anywhere near the year you went to Saginaw?

A. No, sir; I can't. I was in Flint and Saginaw together about five years.

Q. 14. What were you doing before this?

374 A. I went to work for Mr. Shippay in 1856, and lived with him until the year 1858, and then I went out to Mount Clemens and lived with Robert Campbell about two years, and then went to Flint.

Q. 15. What year and what time in the year did you go to Flint?

A. I think it was in 1860, in the winter.

Q. 16. Who did you work for then?

A. The first man I worked for then was Dr. Lamon; I worked for him the remainder of the winter and along in the spring; then I worked for Willard Pettee; I couldn't say how long I worked for Mr. Pettee; something over a year; and then I worked for Mr. Rosevelt; I don't remember how long I worked for him. After leaving Mr. Rosevelt I worked for Pratt & Roberts. I didn't work for them at Flint but a short time, and then went with them to Saginaw, and worked with them there from spring to fall.

Q. 17. Where did you go to then?

A. I remained then in Saginaw. I went to work for Mr. Carter for a little while, and then to the Everett House barn, where I remained as long as I was in Saginaw.

Q. 18. When and where were you born?

A. I was born in Canada.

Q. 19. Can you tell when, without stopping to count it up?

A. No; I was thirty years old the 20th of December. I was figuring what year it would bring it. I was born in 1842, December the 20th. December is just before January, isn't it?

375 Q. 20. Where were you born?

A. In Coldchester, Canada.

Q. 21. How old were you in 1856?

A. Fifteen years old December 20th, 1856.

Q. 22. Where did Samuel Barlin live in 1856, when you knew him?

A. I couldn't say where he lived. I used to see him around; didn't know where his folks lived.

Q. 23. Where did you see him, and how often?

A. He came to my barn where I worked. He used to be there most every day.

Q. 24. How much of the time?

A. I couldn't say how much of the time. He used to come there and stay with me all night some nights.

Q. 25. Where is Mr. Shippay now?

A. I could not say where he is. He is not in the city.

Q. 26. When did he leave Detroit?

A. I couldn't say. He has been away from here a good while.

Q. 27. What was his business at the time you worked for him?

A. He kept a sale-stable for the sale of horses.

Q. 28. Where did he keep his stable?

A. On the corner of Shelby and Lafayette streets, the southeast corner.

Q. 29. Where did you live at that time, or, rather, your family?

376 A. My parents were not living at that time. I was living with Mr. Shippay.

Q. 30. Did you see Barlin at any other place than this stable; and if so, where?

A. I saw him in church and on the dock. I used to see him all over town. He was peddling apples at that time.

Q. 31. Who was with him when you saw him at church?

A. He was most always alone. I never saw any person particular with him, only when he was with me.

Q. 32. Who was with him the first time you ever saw him?

A. I don't remember.

Q. 33. How did you get acquainted with him?

A. We had all been to church together and went away together, like boys do.

Q. 34. Where did you go?

A. I went down to Mr. Shippay's barn.

GEORGE W. HECTOR.

Subscribed and sworn to before me this 20th day of May, 1872.

DON M. DICKINSON, *Examiner.*

SAMUEL H. DAVIS, recalled, having been heretofore duly sworn as a witness in this cause:

377 Q. 1. Are you acquainted with Samuel Barlin, the witness who has been sworn in this case; if so, where and when did you first become acquainted with him?

A. I am. I first got acquainted with him when we lived on Jefferson avenue, in the Chapaton House, some time in the spring of 1857; winter or spring.

Q. 2. For whom did he work at that time, and where did he live?

(Objected to as incompetent and immaterial.)

A. He worked for father, William Davis. I don't know where he lived. He lived at home, I think. I don't know the house or number.

Q. 3. What was the work he did for your father at that time?

(Same objection.)

A. He done chores around the house, sawed wood, helped break up ice for the freezing-box or refrigerator, and helped us handle fish.

Cross-examination without waiving objections:

Q. 1. What street did Barlin live on at that time?

A. I didn't know; or, if I did, I don't remember it now.

Q. 2. Did he go home nights, or stay at your father's house?

A. I can't remember whether he stayed there all the time or

378 not. He was there some nights, I think. I lived at home. I think he took some of his meals there. I couldn't say whether he took them all or not.

S. H. DAVIS.

Subscribed to before me this 20th day of May, 1872.

DON M. DICKINSON, *Examiner.*

Adjourned until 2 p. m., May 20th, 1872. Mr. Kent appears for defendants. Mr. Prentiss appears for complainant.

Mrs. EMMA WORMAN, a witness who has heretofore been duly sworn in this case, is recalled by the defendants, and being examined testifies as follows:

Q. 1. Are you acquainted with Samuel Barlin?

A. I am.

Q. 2. When and where did you first become acquainted with him?

A. When we lived on Jefferson avenue, Detroit, in the spring of 1857, as near as I recollect.

Q. 3. What was he doing when you became acquainted with him?

(Objected to by Mr. Prentiss as incompetent and irrelevant.)

A. He was errand-boy for my father; he used to clean knives, &c.

Q. 4. Where did he live at that time?

379 (Same objection as above.)

A. I do not remember where he lived, but he used to take his meals at our house. I can't remember whether he remained there or not. I taught him to read at that house.

Q. 5. How long did he live at your house at that time?

A. I don't remember.

Q. 6. How long did your acquaintance continue?

A. I have known him up to the present time.

Cross-examined by Mr. Prentiss:

Q. 1. How soon after Barlin left your father's house, at the time you have spoken of above, did you see him again?

A. I don't remember just how long it was.

Q. 2. Can you give anywhere near the time?

A. He worked for us from that time to this, off and on. I can't remember when he didn't work for us, from that time up to three years ago.

Q. 3. How much of the time did he work for your family; as much as one month, two, or three months in the year, or more?

A. I don't remember.

Q. 4. Can you give any particular year, or time of the year, in which he worked for your family, except what you have given above?

A. I don't think I can.

380 Q. 5. Did you, at any time, know his mother, Maria Barlin, and if so, when and where?

A. I did not know her; I never saw her.

Q. 6. Did you at any time know where she lived?

A. I did not.

MRS. EMMA WORMAN.

Subscribed to before me this 20th day of May, 1872.

DON M. DICKINSON.

The further examination is here adjourned, by consent of counsel, to May 27th, 1872, at 9 a. m.

DON M. DICKINSON, *Examiner.*

MAY 27TH, 1872.—The further examination is here adjourned, by consent of counsel, to June 4th, 1872, at 9 a. m.

DON M. DICKINSON, *Examiner.*

MAY 27TH, 1872.—Mr. Kent appears for defendants; Mr. Prentiss appears for complainant.

381 AMELIA RAYL, a witness produced on the part of the defendants, being duly sworn and examined, testifies as follows:

Q. 1. Are you acquainted with Samuel Barlin, and if so, where did you first become acquainted with him?

A. I am; I first became acquainted with him when we lived on Jefferson avenue, Detroit.

Q. 2. What did he do there when you first knew him?

A. He worked for my father.

Q. 3. What, if anything, did you at that time do for him?

A. I taught him to read and write on a slate.

Q. 4. Was that while your father and family were living in the house on Jefferson avenue?

(Objected to as leading.)

A. It was.

Q. 5. Did Samuel Barlin work for your father after he left the house on Jefferson avenue or not?

A. He did, off and on, until the past three years.

Q. 6. Have you known him ever since he first worked for your father when you lived in the house on Jefferson avenue or not?

(Objected to as leading.)

A. I have.

Q. 7. What year was it when he worked for your father first?

A. 1857.

382 Cross-examination:

Q. 1. Where did Samuel Barlin live when he first worked for your father?

A. I don't know.

Q. 2. Did you know Maria Barlin, his mother, or any of his family?

A. I did not.

Q. 3. Did you know where any of them lived?

A. I did not.

Q. 4. Where did he board at the time he worked for your father?

A. He took his meals with us part of the time; I don't know where he took the rest of his meals, or where he slept.

Q. 5. How much of the time did he take his meals at your house?

A. I do not know.

Q. 6. What year did your father's family live on Cass street?

A. I don't know.

Q. 7. What year on Congress street?

A. I think it was 1858—'57; excuse me, 1857.

Q. 8. What year on Lafayette street west?

A. I think it was in the winter of either 1861 or 1862; I think 1861.

Q. 9. What time did you move to Lafayette street east?

383 A. I do not know, as I was not living here in this city at the time.

MRS. AMELIA RAYL.

WILLIAM ROSS HINES, a witness produced on part of the defendants, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. William Ross Hines; age, 33; residence, Detroit; occupation, a grocery-keeper; I have resided in Detroit about thirty years.

Q. 2. Are you acquainted with a colored man named Samuel Barlin; and if so where did you first become acquainted with him?

A. I am. I became acquainted with him in 1857 or 1858; in 1857, I think.

Q. 3. Where was he living, and what was he doing at that time?

A. He was living with Mr. William Davis, on Congress street east, back of what was the Methodist church at that time, in the rear of the market; he was choring round the house.

Q. 4. What was your business, and where was your place of business, at that time?

A. My business was grocery, and place of business on Michigan Grand avenue, near the corner of that street and Randolph street.

384 Q. 5. How often at that time did you see Samuel Barlin, and where?

A. I saw him several times over at our store and at Mr. Davis' house; probably about twice a week; for a month or two, sometimes once a week.

Cross-examined by Mr. Prentiss:

Q. 1. In whose employ were you at that time?

A. In no particular employ; we both had an interest in it; the man that was with me was named John Morse.

Q. 2. Which side of Michigan Grand avenue was it, and what was the number?

A. It was on the south side; we had no number at that time.

Q. 3. Are you sure there was no numbers at that time?

A. I wouldn't swear there were or were not.

Q. 4. Does the building stand there now; and what is the number now?

A. Yes, sir; couldn't say what the present number is.

Q. 5. Who now occupies that building?

A. Mrs. Fishbuck, a German, for a grocery and saloon.

Q. 6. Who was your landlord?

A. Jeremiah Calirou, I think.

Q. 7. When did you commence business there, and when did you quit?

385 A. I think I went in there in April, 1858—1857, I mean; I quit in January the same year—I mean January, 1858, the next year; the time Morse died.

Q. 8. What business did you next do?

A. I went South after that; into the railroad business.

Q. 9. How long were you South?

A. I was South until the war broke out, off and on; sometimes home in Detroit.

Q. 10. When did you last see Samuel Barlin?

A. I think the last time I saw him was some time the latter part of the summer of 1857, before Mr. Davis moved away from Congress street.

Q. 11. How old was he at that time?

A. I couldn't say; he was somewhere about fourteen or fifteen; he was quite young.

Q. 12. How often have you heard his name mentioned since?

A. I don't know as I ever did until the other day.

Q. 13. By whom did you hear it then mentioned?

A. Mr. Samuel Davis.

Q. 14. Will you give just what he said to you at that time?

A. He came over to my stand on the market; he asked me how long I had known his family; I told him I thought from 1857 and upwards; he asked me if I knew Barlin, a young boy who used to work for them; I told him I did; he asked me if I could recognize him; I told him

386 I could; I went down with him to a little vegetable store, near

Randolph street, and there were several standing at the door, and I pointed out Mr. Barlin to Mr. Davis, and told him that was the man.

Q. 15. How many colored men were there standing there?

A. I couldn't say whether there was two or three; there was several, and some white men.

Q. 16. Were the colored men all young like Barlin?

A. I couldn't say about their ages.

Q. 17. Did Davis tell you where Barlin worked, or did he tell you that he would take you to see if you could recognize him?

A. He didn't tell me where he worked; he did take me to recognize him; I knew I was going to see the man he wanted me to recognize.

Q. 18. How old a man is he now?

A. I couldn't tell.

Q. 20. How did you come to remember his name so long?

A. I am well acquainted with a white man with the name of Barlin.

Q. 21. Who told you his name when you knew him in 1857 or '58?

A. I asked him his name.

Q. 22. Did you then know the white man of the name of Barlin?

A. Not at that time.

Q. 23. Did you ever know any of Barlin's family?

A. No, sir.

387 Q. 24. Did you ever know where they lived?

A. No, sir.

Q. 25. Did you ever know anything about him except what you have said about him coming to your store, and what Davis said to you a few days since?

A. I told you I saw him both at Mr. Davis' house doing chores and at the store; nothing more than that.

Q. 26. For how long a time did this continue; that you saw him at the house and your store?

A. Off and on for a—probably six months.

Q. 27. When did it commence, and when end?

A. It commenced some time in April, and ended some time in August in the same year, 1857, when Davis moved away from there; I don't know when they did move away; I think August.

WM. ROSS HINES.

Sworn to and subscribed before me this 4th day of June, A. D. 1872.

DON M. DICKINSON, *Examiner.*

WILLIAM PLEASANT SMITH, a witness produced on behalf of the defendants, being duly sworn and examined, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

388 A. William Smith; age, going on forty-two; residence, Windsor, Ontario, opposite Detroit; occupation, I can't hardly tell; in the winter-time I work in a hardware store, and whitewash in summer.

Q. 2. How long have you resided in Windsor; and where did you reside previous to then?

A. I think, to the best of my knowledge, about seven years; before that I resided in Detroit for sixteen years, off and on; my home was always here.

Q. 3. Are you acquainted with Samuel Barlin; and if so, when did you first become acquainted with him?

A. I am; about 1855, to the best of my knowledge; I first became acquainted with him—I know just about the time; it was about 1855.

Q. 4. What was he doing, and where was he living, when you first became acquainted with him?

A. He was peddling apples; I don't know where he was living.

Q. 5. Was he living in Detroit or in some other place?

A. He was living in Detroit.

Cross-examined by Mr. Prentiss:

Q. 1. Did you know where Barlin lived?

A. I did.

Q. 2. Where did he live and when was it?

A. He lived on Lafayette street east, when I knew where he lived; I can't tell the year that was; it has been some time.

Q. 3. It hasn't been as long as it has been since you first knew him, has it?

A. No, sir.

389 Q. 4. Whereabouts on Lafayette street did he live?

A. A little above Hastings at that time, when I first knew where he lived at—on the right-hand side going up—the south side of Lafayette street; I don't know in whose house.

Q. 5. When was that?

A. I don't know just the time; that is, just the year.

Q. 6. Can you tell whether it was in 1860 or 1870?

A. No, I couldn't tell; it was in 1860, anyhow, that I know he lived there.

Q. 7. Was it in 1860, 1861, or 1862?

A. I can't tell; I know it was some time between 1860 and 1870.

Q. 8. Did his mother live there with him—his mother, Maria Barlin?

A. Yes, sir.

Q. 9. Did you ever know of their living in any other place; and if so, where?

A. I don't know; I have seen him in another place, but don't know when they moved there.

Q. 10. Where was it?

A. On Lafayette street, down in the block below, between Antoine and Hastings streets, on the same side of Lafayette street.

Q. 11. How do you know that it was in 1855 that you first saw Barlin?

A. I judge from counting up time that it was about that time; I know just where I was working, and I know how much time I put in in the store in the time I left and the time I got married.

390 Q. 12. What store were you working in, and how long did you work there, and how much time did you put in there?

A. I was working in Sutherland & Foote's store; I worked there four years; I put in all the time except when I was sick.

Q. 13. What year did you commence working for Sutherland & Foote, and what year did you quit?

A. It was in 1857—either in the year 1857 or 1854—I don't know which it was; I meant the year back of 1857 instead of 1854; that would be 1856; I don't know what year I quit; you can count it up yourself; I can't tell.

Q. 14. Where were you working when you knew Barlin on Lafayette street, between Hastings and Revard?

A. I was in Windsor.

Q. 15. How long had you been there?

A. I don't know.

Q. 16. Can you give any idea?

A. I can't; I can't keep an account of such things.

Q. 17. Do you know how long Barlin had lived on the south side of Lafayette street, between Hastings and Revard, when you first knew them there?

A. No, sir.

Q. 18. Can you tell what year you first knew him there?

A. No, sir.

Q. 19. Did you go to Windsor as soon as you left Sutherland & Foote's?

A. No, sir.

390[1] Q. 20. Where did you go?

A. I stopped here in Detroit; I was on the market huckstering; I don't remember how many seasons; afterwards I went to whitewashing; I can't tell for how long.

Q. 21. Can you tell what year you went to Windsor?

A. No, sir.

Q. 22. Can you tell the year you were married?

A. Yes, sir; in 1861.

Q. 23. Where, and by whom?

A. In Royal Oak; by—I think the minister's name was Clark; a Baptist minister; my wife's name was Harriet Ann Lancaster.

Redirect by Mr. Kent:

Q. 1. How long before you were married did you leave Sutherland & Foote, if at all?

A. It was about a month after.

Q. 2. Did you first get acquainted with Samuel Barlin before you worked for Sutherland and Foote, or after?

A. Before I went there.

Q. 3. What were you doing when you first knew Barlin?

A. Whitewashing.

Recross by Mr. Prentiss:

Q. 1. What time in 1861 were you married?

A. I would have brought the certificate over, but I didn't; I can't tell in what month.

390[2] Q. 2. Can you tell what part of the year?

A. It was in the spring.

Q. 3. How long before you went to work for Sutherland & Foote that you first saw Barlin?

A. About two years, I think.

Q. 4. Was it in the winter or summer?

A. I don't know.

Q. 5. How often do you see him?

A. I saw him several times; I don't know how often.

Q. 6. Where did you see him?

A. Round the market.

Q. 7. Where are Sutherland & Foote now?

A. Sutherland is sick and Foot is up the lake; Sutherland is here in Detroit.

Q. 8. What is Sutherland's business?

A. He is a grocery-keeper on the corner of Randolph and Michigan avenues.

Q. 9. Who did you first tell you knew Barlin?

A. I told no one that I knew him.

Q. 10. How did they come to have you here as a witness?

A. I didn't understand the former question; there was a man asked

me if I knew Barlin; I told him I did; he wanted to know if I would testify how long I had known him; I told him I would, to the best of my knowledge; that is all he said to me, and all I said to him.

390[3] Q. 11. Did any other man see you and talk to you about Barlin?

A. No, sir.

Q. 12. Who was this man?

A. Mr. Davis, (David W. Davis.)

Q. 13. Where was this that he saw you?

A. He saw me in Windsor.

Q. 14. When was this?

A. It was within two or three days.

Q. 15. When did you next see Mr. Davis?

A. Not until this morning.

Q. 16. Did he come for you there to have you come over to testify as a witness?

A. Yes, sir.

W. P. SMITH.

Subscribed and sworn to before me this 4th day of June, 1872.

DON M. DICKINSON, *Examiner.*

GEORGE DE BAPTIST, a witness produced and sworn on behalf of defendants, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. George De Baptist; age, 54; residence, 293 Jefferson avenue, Detroit; occupation, a caterer.

390[4] Q. 2. How long have you resided in Detroit?

A. It is twenty-six years next month since I brought my family here.

Q. 3. Are you acquainted with Samuel Barlin; and if so, when did you first become acquainted with him?

A. I am acquainted with him; in 1857, I think, as near as I can recollect, I first became acquainted with him; I was living at 124 Larned street, east.

Q. 4. How long was he there, and what was he doing?

A. He was quite a young lad; I only know what he told me; he told me he was at work for Mr. Davis; I afterwards saw him at work for Mr. Davis in the Russell House block; but this was some time after I first saw him.

Q. 5. How much of him did you see when you first got acquainted with him?

A. I saw him frequently on or about the market; I was there, as I am now, about every morning.

Cross-examined by Mr. Prentiss:

Q. 1. Where do you live now?

A. 293 Jefferson avenue, Detroit.

Q. 2. Where did you live immediately before going on to Jefferson avenue?

A. On Larned street.

Q. 3. Where before that?

A. On Crogham street.

Q. 4. When did you go to Jefferson avenue?

390[5] A. I went to Jefferson avenue four years ago last month, the 6th day of May.

Q. 5. When did you leave Crogham street?

A. I left there May or June, 1865; I am not positive whether it was May or June; I went from there to Larned street.

Q. 6. You have no writing or memorandum by which you fix the dates when you first knew Barlin?

A. No, sir.

Q. 7. Do you know his family, or any of them?

A. No, sir; not of my personal knowledge.

Q. 8. Did you ever know where they lived?

A. Not of my own knowledge; I heard he lived on Lafayette street, between Hastings and Revard streets.

Q. 9. What was Barlin doing when you saw him in and around the market?

A. I can't recollect what he was doing at that time; he said he was working for Davis.

Q. 10. About how long after this was it that you saw him at work for Davis in the Russell House block?

A. I think it was in 1861 or '62 that I first saw him working in the Russell House block.

G. DE BAPTIST.

Subscribed and sworn to before me this 4th day of June, A. D. 1872.
DON M. DICKINSON, *Examiner.*

390[6] JAMES F. MITCHELL, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. James F. Mitchell; age forty-six, January 1st, past; my residence, 165 Beaubien street, Detroit; occupation, a boarding-house keeper.

Q. 2. How long have you resided in Detroit?

A. Seventeen years the 26th of August coming that I have been in Detroit.

Q. 3. Are you acquainted with Samuel Barlin?

A. I am.

Q. 4. When did you first become acquainted with him?

A. My first acquaintance with him was in December, 1857.

Q. 5. Where did he then live, and what was he doing when you first knew him?

A. He was a boy going around the streets doing chores—working around; sawing wood.

Q. 6. How do you fix that date—the time when you first knew him?

A. Here is a receipt that I received for the house of the woman that I was then renting of—the house I then occupied; it is dated December 30th, 1857; that winter following I worked at the Biddle House; my health was not very good, and I had occasion to have my wood sawed, and this same Barlin was the boy that did it; he sawed the wood; he got it in for my wife.

Q. 7. Where did you live at that time?

390[7] A. I lived on Fort street, between Hastings and Antoine, Detroit.

Q. 8. How long did you live there?

A. I can't say how long I did live there; did not keep any book account of it, and can't say how many months I lived there.

Q. 9. Did you ever live in that house more than one winter?

A. I lived there twice; at two different times; in the same house.

Q. 10. When was the other time?

A. I can't tell exactly; this was the first time; it was after that that

I lived there the second time; a year or so after that I lived there a few months.

Q. 11. Which time was it that Sam. Barlin cut your wood?

A. The first time I was in the house.

The further examination is here adjourned, by consent of counsel, until Wednesday, June 5th, 1872, at 2 p. m.

June 5th, 1872, at 2 o'clock p. m. Mr. Prentiss appears for complainant, Mr. Kent appears for defendants.

Q. 1. Where did you live before you came to Detroit?

A. I lived in Chatham, Canada West.

390 Q. 2. How long did you live there, and what was your business?

A. I lived there for one year. I landed in Chatham the last day of July and left the 26th day of August the year following. My business was that of a common laborer.

Q. 3. Where did you live before that?

A. I lived in Providence, R. I., for a few months—six or seven months, probably.

Q. 4. Where before that?

A. I was in Boston, Mass., for a short time.

Q. 5. What was your business there, and whereabouts did you live there?

A. I don't remember the number of the house or the street, but I boarded with my wife at a boarding-house kept by Lewis Hayden. I didn't do much while I was there. I was there a month, I suppose, and wasn't doing anything in particular.

Q. 6. Where did you live before that, and how long?

A. I lived in Philadelphia, Pa. I was there backwards—some part of the time there and some part of the time in Delaware—I suppose as much as five or six years.

Q. 7. What year did you come to Detroit?

A. As well as I can remember, it was about 1855—somewheres about there, I think. It was in 1855 or 1856. I have no record. I don't remember exactly.

Q. 8. Where did Samuel Barlin live when you first saw him?

A. That I cannot say, sir. I don't know.

391 Q. 9. Did you ever know where he lived; and, if so, when was it, and where did he live?

A. When? I am not able to tell you the exact time; but where it was, was on Lafayette street, on the south side, between Hastings and Revard streets though.

Q. 10. How soon was this after you first saw him?

A. I can't tell, sir, any nearer what time it was.

Q. 11. Have you not some idea how long it was after you first saw him?

A. I have none in particular. It might have been one or two years. I couldn't say at all.

Q. 12. How many times did he saw wood for you during the first year you knew him?

A. I can't tell how many times he sawed wood for me. He sawed more or less during that winter—the winter of 1858—the winter of 1857 and 1858.

Q. 13. Can you tell whether he sawed wood for you more than once or not?

A. I think he did, sir.

Q. 14. More than twice?

A. I guess he did. Yes, sir; he sawed wood for us several times.

Q. 16. More than five times?

A. That I couldn't say, whether it was more or less. The wood was sawed very frequently when I was away from home.

Q. 16. In what quantities did you buy wood at that time?

392 A. In small loads; probably one-half a cord a load.

Q. 17. Who did you usually buy wood of?

A. I bought it on the public wood market from any one I could buy it of the cheapest.

Q. 18. Do you mean from men who brought their wood in from the country, or from dealers in the city?

A. From the countrymen; men hauling wood in from the country.

Q. 19. Was not wood thus brought into the city in small loads always sawed?

A. No, sir; it was not always sawed.

Q. 20. Where is your wife now?

A. She is at home, corner of Beaubien and Croghan, where I live.

Q. 21. Who kept the Biddle House at ha time?

A. A gentleman called Col. Dibble and his son Charley Dibble.

Q. 22. Where are they now?

A. They are both dead, I believe.

Q. 23. Can you give the names of any men working there with you at that time?

A. I can give you the names of several—Henry Parker, Henry Ratliff, Jefferson Johnson, William Blake, Charley Robinson, Aleck Williams, Thomas Bingay, Timothy Bingay, and by studying a little I could give others.

Q. 24. Do all these men live in Detroit now?

393 A. Some of them do, some of them are dead; Henry Ratliff is dead; some I don't know where they are; Henry Ratliff, Jefferson Johnson, and Timothy Bingay are dead; Parker is in Detroit; Alexander Williams, I don't know where he is; the rest are in Detroit.

Q. 25. How did you get Samuel Barlin when you wanted him to saw wood?

A. He was passing around, and stopped in there occasionally to see whether we wanted anything done.

Q. 26. Did he do anything else for you than saw wood?

A. I don't remember that he did.

Q. 27. How often did he call at your house that way during that winter?

A. I have no idea at all how often; I was away from home always through the day at work.

Q. 28. Was you not at home mornings and evenings?

A. I was home morning and nights; I would leave home early in the morning, and wouldn't get through my work until seven or eight in the evening, and sometimes later.

Q. 29. What time in the morning did you leave?

A. I left home between five and six o'clock in the morning, generally, in the winter time.

Q. 30. Did you not go home at noon?

A. I didn't go home at noon; occasionally I went home between morning and noon.

Q. 31. What was your business at the Biddle House?

A. A waiter in the dining-room.

394 Q. 32. How near to the house where you lived is the house

where you knew Barlin to live, on the south side of Lafayette, between Hastings and Revard streets?

A. About a block and a half.

Q. 33. How often did you see Barlin at your house sawing wood?

A. I couldn't tell how often I saw him there; more than once.

Q. 34. What kind of a house was it that you lived in on Fort street?

A. A little frame, single house.

Q. 35. Who owned that house?

A. Rebecca Wallace.

Q. 36. Where did she live at that time?

A. She lived in the same house.

Q. 37. Who owned the ground that the house stood on, if you know?

A. A gentleman by the name of Judge Moran.

Q. 38. Did Mrs. Wallace own any other house near this?

A. She did not, sir.

Q. 39. Is that house still standing there, and still a single house?

A. I believe it is, as far as I know.

Q. 40. Who was the stewart at the Biddle House at this time?

A. I think, as well as I can remember, his name was John Kilby; I cannot tell where he is now.

395 Q. 41. In whose writing is the receipt you produced on your direct examination, signed Rebecca Wallace?

A. That of her daughter, Emma Wallace.

Q. 42. Where is her daughter now?

A. I cannot tell you exactly where she is now—whether in Pennsylvania or where she is.

Q. 43. Is she married or single now?

A. She is married; her husband's name is Eli Lell; I don't know where he is; think he is in Kalamazoo.

Q. 44. Where is Mrs. Wallace now?

A. In Buffalo; she is married again to a Mr. Harris; I don't know his first name.

Q. 45. Did you keep any book-account of your wages at that time?

A. I did not.

Q. 46. How many times have you worked at the Biddle House?

A. I worked there twice.

Q. 47. When did you go there the first time, and when did you leave?

A. I went there in the fall of 1857; I don't remember what month; I think it was in March I left, of the same year, 1858; I mean I went there in 1857, in the fall, and left there in March, 1858.

Q. 48. When did you go there the second time, and when did you leave?

A. I went there, I think it was probably in 1859; I guess it was, as near as I can remember; I don't know what month; I think I was there about three months; I don't know what month I left, either.

396 Q. 49. Who was proprietor at that time?

A. The same parties as at the first time, Col. Dibble and his son.

Q. 50. Where were you living then?

A. I think I was living on Lafayette street then, near Rivard—I don't remember the number—on the south side.

Q. 51. In whose house?

A. Henry Wing was the man's name.

Q. 52. Where is he now?

A. He is dead.

Q. 53. Have you any receipts for rent that he gave you?

A. I havn't any now.

Q. 54. Who is your landlord where you now live?

A. Robert Smith.

Q. 55. How long have you lived there?

A. Since July last.

Q. 56. Have you any receipts for rent except those given you by Smith, your present landlord?

A. I don't know that I have, that I could get hold of; I don't remember that I have.

Q. 57. Have you any more of Mrs. Wallace's receipts?

A. I have not, that I know of.

Q. 58. When did you go into Mrs. Wallace's house the second time, and when did you leave there?

A. I can't tell you the exact time at all.

Q. 59. What year was it?

397 A. I really don't know.

Q. 60. How long did you stay in the house the second time?

A. I can't tell you; I don't know.

Q. 61. Have you not some idea of the time?

A. I have no idea particularly that I could rely upon that would be any ways correct.

Q. 62. What was your business from the time you came from Chatham until you went to work at the Biddle House?

A. Cooking at the Waverly House, kept then by John Small; I went from the Waverly House immediately to the Biddle House, the first time I worked there.

Q. 63. Will you produce the receipt for rent, and allow the examiner to attach it to your deposition?

A. I will. (Produces the receipt or paper which is hereto attached, marked Exhibit "O.")

Re-examined by Mr. Kent:

Q. 1. Where did you find this receipt, and when?

A. I found this receipt in looking over some papers that I had; I think it was Monday of this week or Saturday of last week—Monday of this week.

Q. 2. Did you look for any other receipts at the time?

A. I did not look for any particular one at the time, only for the receipts of that year.

Recross by Mr. Prentiss:

398 Q. 1. You mean you only looked for receipts for the year 1857, do you not?

A. Yes, sir.

Re-examined by Mr. Kent:

Q. 1. Why did you look for receipts of that year?

(Objected to by Mr. Prentiss, as irrelevant, incompetent, and immaterial.)

A. What caused me to look for it was: I was met on the street and questioned as to Samuel Barlin—how long I had known him. I told him I didn't know exactly how long I had known him, but I thought I probably could find out by hunting some old receipts. I went home, I looked over some old papers, and found this receipt.

(Mr. Prentiss, for complainant, objects to the answer as not being responsive to the question; also the statement of the witness as to what he said and did is objected to as immaterial and incompetent.)

Cross-examination resumed without waiving objections:

Q. 1. Who was it that met you on the street and asked you about Barlin?

A. Joseph Swift.

Q. 2. Where is he, and what is his business?

A. He is a colored man, in the employ of Mr. Davis.

Q. 3. Did he ask you if you knew Barlin in 1857?

399 A. He did not.

Q. 4. When did you next see Swift after this?

A. I don't know that I saw him until yesterday to speak to him.

Q. 5. What time, and where?

A. He came up town yesterday after me—up to my house, in the afternoon—and I came down here with him.

Q. 6. He went to your house for the purpose of getting you to come down here, did he not?

A. I presume so.

Q. 7. Who else besides Swift did you talk to about when you first knew Barlin, before you were sworn here?

A. Mr. Davis—D. W. Davis.

Q. 8. When and where did you talk with Mr. Davis?

A. On Saturday last, at my house.

Q. 9. Are you sure it was Saturday?

A. I think I am certain it was Saturday.

Q. 10. Was it before or after you found this receipt?

A. It was before I found it.

Q. 11. Who did you talk with, if any one, between the time you found the receipt and the time Swift brought you down here to testify?

A. Mr. Kent here, and Mr. Samuel Davis.

Q. 12. When and where was this?

A. I think that was Monday, at Mr. Kent's office; this was before Swift came after me.

400 Q. 13. Who took you to Kent's office?

A. Mr. Samuel Davis.

Q. 14. Where did he find you?

A. I went down to his place of business.

Q. 15. Who with?

A. No one but myself.

Q. 16. Who asked you to go there?

A. No one.

Q. 17. Why did you go there if no one asked you to go?

A. I went there to show him this receipt that I received at that time and have produced to-day.

Q. 18. Who told you that he wanted to see that receipt?

A. No one told me he wanted to see the receipt. I had learned that he wanted to know, if possible, how long I had known Samuel Barlin.

Q. 19. Who did you learn this from?

A. I learned it first from Joseph Swift, and then from Davis himself. (Mr. Kent says: "Do you mean D. W. Davis?" Witness answers, "yes.")

JAMES F. MITCHELL.

Subscribed and sworn to before me this 5th day of June, A. D. 1872.

DON M. DICKINSON, *Examiner.*

By consent of counsel here present, the further examination herein is adjourned to Friday, the 21st day of June, 1872, at 10 a. m.

DON M. DICKINSON, *Examiner.*

401 THURSDAY, June 21, 1872.—10 o'clock a. m. Mr. Prentiss appears for complainant and Mr. Kent appears for defendants.

GEORGE H. HARRINGTON, being a witness produced on behalf of defendants, being duly sworn and examined by Mr. Kent, testifies as follows:

Q. 1. What is your name, age, occupation, and residence?

A. George H. Harrington. I am a commercial agent. My age is 37, and my residence has been Louisville for the most of the time for the past twelve years.

Q. 2. Were you ever acquainted with William Davis, now deceased, the father of Samuel H. and David W. Davis?

A. I was.

Q. 3. When and where did you get acquainted with him?

A. In the spring of 1857, in Detroit; on Jefferson avenue, in the city of Detroit.

Q. 4. Did you board in his family at that time?

A. I did.

Q. And, if so, how long?

A. I did board with him at two different periods; on the avenue—Jefferson avenue—between Beaubien and Antoine streets, and on Congress street east, between Randolph and Brush streets.

Q. 5. State if you ever saw in his possession, in the house on Jefferson avenue, an ice-box or not.

402 (Question is objected by Mr. Prentiss, as incompetent, irrelevant, immaterial, and leading.)

A. I did.

Q. 6. State whereabouts was this box when you saw it.

(Objection continued.)

A. In a shed back of the kitchen, between the house and barn.

Q. 7. Describe this box.

A. Near as I recollect the box was four or five feet square, I should think, for the purpose of preserving fish, or other materials placed there for keeping; it had a tube running down from the top to the bottom, which was filled with ice and salt, for the purpose of producing temperature, cold or hot; cold, I would liked to have said—temperature of cold for freezing; if I remember, the box was constructed of wood, whether single or double I don't remember; at that time said box was used for the purpose of freezing fish.

Q. 8. What entrance was there to the tube you have described?

A. A top entrance.

Q. 9. How was this entrance closed, if at all?

A. If I remember right, by a cover.

Q. 10. Where was the entrance into the box?

A. On the side.

403 Q. 11. What communication, if any, between the inside of the tube containing ice and salt and the interior of the box?

A. None that I understood of, except the temperature produced by the ice and salt through the tube, congealing the atmosphere.

Q. 12. What, if anything, did you see in this box?

A. Fish.

Q. 13. Where were these fish, and what was their condition?

A. They were in the box on the floor, in a frozen condition.

Q. 14. How many were there when you saw them?

A. Do not remember. Cannot tell. There might have been one hun-

dred, or three, or more. I mean one hundred, or three hundred, or more.

Q. 15. What was the day of the week when you first saw this box?

A. I don't remember. Sunday—it was Sunday. I thought first you said the day of the month.

Q. 16. How did you happen to see it then?

A. I called on a friend, Mr. John Morse, then boarding with Mr. Davis. Mr. Davis came in with his friend, as I supposed. I was introduced to him by Mrs. Davis. He invited us to see this box containing fish in a frozen state. I went and examined the same with my friend, Mr. Morse.

Q. 17. Did you ever see this box more than once?

404 A. Not to have my attention called directly to it, yet saw same box several times. Not feeling interested, never examined it again.

Q. 18. Do you remember any one in Mr. Davis' employ when you boarded with him on Jefferson avenue?

A. I do not.

Q. 19. Think that answer over.

(Objected to by Mr. Prentiss as incompetent, leading, and suggestive to the witness the answer desired, and as cross-examining defendants' own witness.)

A. I do remember a negro boy I supposed to be in their employ.

Q. 20. Anything else about him?

A. Nothing.

Q. 21. How long did you board at Mr. Davis', on Jefferson avenue?

A. I think about four weeks.

Q. 22. How long on Congress street?

A. As near as I remember, about two months.

Q. 23. Did you ever see this box on Congress street?

A. I think I did.

Q. 24. Where was it when you saw it on Congress st.?

A. In the back kitchen; I never examined it there.

(All the direct testimony of the witness Harrington objected to by Mr. Prentiss as not being in reply to the evidence of complainant.

405 Cross-examination by Mr. Prentiss:

Q. 1. In whose employ are you now?

A. No one's.

Q. 2. What are you doing now?

A. Selling goods on commission.

Q. 3. For whom?

A. For various parties.

Q. 4. For whom? (Question repeated.)

A. I told you I was doing nothing now.

(Mr. Kent and Mr. Davis requests the commissioner to read over to the witness his cross-examination entire; which is done.)

Witness here states "that is correct."

Q. 5. Who was the last man you did business for?

A. Lewis & Jones, of Louisville, Ky.

Q. 6. When was that?

A. This spring.

Q. 7. What is their business, and on what street and what number is their place of business?

A. Wholesale liquor dealers; 27 Fourth street.

Q. 8. How long did you do business for them?

A. About two months.

Q. 9. Who did you do business for before that?

A. Hopkins & Higgins, wholesale liquor dealers, No. 384 Main street, Louisville, Kentucky. I was with them about a year and a quarter.

406 Q. 10. Where did you live before you went to Louisville?

A. Detroit.

Q. 11. When did you come to Detroit, and where did you live?

A. I don't remember the exact year that I came here; I left in 1856 and returned in the winter of 1857; left again in 1858, in June.

Q. 12. Were you ever in any person's employ in Detroit, while in Detroit, and if so, when, and who was it?

A. Yes; S. Friedman & Bros.; I commenced services March the 18th, 1857; I quit in 1858; think it was March 18th, 1858, the time my year was up; I was in the employ of William A. Raymond & Co., William Phelps & Co., Holmes & Co., and Ephraim Brown; that is all; I can't give you dates—that is, all; I can't give dates as to the time I was employed by these persons.

Q. 13. Were you employed by any of these persons prior to 1857?

A. By all of them.

Q. 14. Did you have any family in Detroit at any time, and if so, when?

A. In 1865; a wife with me; we were here together—passing through here; my parents never lived here.

Q. 15. Who did you live with when you first came to Detroit?

A. I boarded with R. S. Gee.

Q. 16. Was he a relative?

A. Yes.

407 Q. 17. Do you know William R. Hines?

A. Not to my recollection.

Q. 18. How intimate were you with John Morse in 1857?

A. Room-mates; we used to visit together—attend socials, &c.

Q. 19. What was his business at that time?

A. Clerking—selling goods; I don't remember for whom.

Q. 20. Where and what was the business?

A. On Jefferson avenue; the business was laces and fancy goods, if I remember right; I think this firm was Byrne.

Q. 21. Which side of Jefferson avenue and between what streets was it?

A. On south side, between Bates and Randolph.

Q. 22. How long was he there employed?

A. Don't know.

Q. 23. Where else was he employed during the year 1857?

A. Don't know.

Q. 24. Was he employed anywhere else during that year?

A. Don't know.

Q. 25. What time in the year 1857 did you first know him there?

A. I think it was the first of February.

Q. 26. What time in the year 1857 did you last know him there?

408 A. I don't remember.

Q. 27. Did you know him to be employed anywhere else during the year 1857?

A. I don't remember.

Q. 28. Are you sure his name was John Morse?

A. I knew him by that name.

Q. 29. Question repeated.

A. I only knew him by that name.

Q. 30. Question repeated.
A. I only knew him by that name to the best of my recollection.
Q. 31. Where is Mr. Morse now?
A. I don't know.
Q. 32. Where was he the last you heard of him?
A. In California.
Q. 33. When did he leave Detroit?
A. I don't know.
Q. 34. When did you first get acquainted with him?
A. I think it was in February, 1857—the first of February.
Q. 35. Where?
A. I don't remember whether it was at Mrs. Davis' or at parties; I think I was introduced to him at a church social on Woodward avenue.
Q. 36. When did you first go to board at Mr. Davis'?
A. I think it was in February—the last of February, 1857.
409 Q. 37. Who, if any one, was boarding there?
A. I don't remember any particular person, except John Morse.
Q. 38. Were there others boarding there then, and if so, how many?
A. Yes; I don't remember how many.

The further examination of this witness is here adjourned to Saturday, June 22, 1872, at 2 o'clock p. m., by consent of counsel.

SATURDAY, *June* 22, 1872—2 p. m.

Mr. Prentiss appears for complainant.
Mr. Kent for defendants.

Cross-examination resumed:

Q. 39. Who did you board with in Detroit immediately before you went to board with Mr. Davis?
A. I stopped at my uncle's, R. S. Gee.
Q. 40. Did you stop with him until he left the city?
A. No, sir.
Q. 41. How long before he left the city did you leave his house?
A. I couldn't tell you.
Q. 42. How many times were you at Mr. Davis' house before you went there to board?
A. Don't remember; several times.
410 Q. 43. Who did you go with?
A. Sometimes with John Morse, and sometimes alone.
Q. 44. Who introduced you there?
A. John Morse.
Q. 45. When did you get acquainted with John Morse?
A. I think I was first introduced to him at the church social on Woodward avenue.
Q. 46. When did you first visit Davis' house?
A. Some time in February, 1857.
Q. 47. How did Mr. Davis come to show you and Morse the box at the time you speak of?
A. Mr. Davis had some one call to see him; he invited this gentleman, Mr. Morse, and myself, and some others in the room to see his box containing fish.
Q. 48. Who was this gentleman?
A. Don't remember.
Q. 49. Who besides Mr. Morse, Mr. Davis, and yourself were there in the room that you know, if any one?

A. Mr. Davis' friend that called to see him, some boarders I do not remember, and no one else.

Q. 50. Were you boarding there at the time?

A. No, sir.

Q. 51. How much time did you spend in examining the box?

A. Probably five minutes.

Q. 52. How often since that time have you talked with any person about that box?

411 A. I never talked about the box with any person until last week; went into Mr. Davis' store to give him information about shipment of goods from his agent; asked for Mr. Davis; the book-keeper asked me if I knew Mr. Davis; I told him I used to board with him in 1857; asked me if I remembered this box; I told him I did; asked me to describe it; I did so.

(All after the words "the book-keeper asked me," objected to, as not responsive to the question.)

Q. 53. Have you ever talked with any person at any other time, about the box?

A. No, sir.

Q. 54. Who was present at this time, besides the book-keeper?

A. No person.

Q. 55. Who sent you to give information to Davis about the shipment of goods from his agent?

A. Received a letter from his agent, and in this letter he asked me to call on Mr. Davis and give this information.

Q. 56. Have you that letter?

A. No, sir.

Q. 57. Where is it?

A. I have destroyed it.

Q. 58. When?

A. At the time I received it, as I do most all communications of like importance.

Q. 59. Before you had called on Davis, or afterwards?

412 A. Afterwards.

Q. 60. Who is this agent, and where does he live?

A. John Ballard, jr.; Jackson, I think, he makes his home.

Q. 61. Where was the letter from?

A. From Kalamazoo, to me here in Detroit, care of the Biddle House.

Q. 62. What was the information he wanted you to give Davis?

A. About goods shipped to Kalamazoo not received; the goods had been transferred to other parties.

Q. 63. Give full statement of what he wrote you in that letter.

A. Tell Mr. Davis goods shipped to Mr. Mosher had not been received by him; had been transferred, I think, to Mr. Coleman, if I remember; full particulars he would write them soon.

Q. 64. Did he write you what the goods were and where you would find Mr. Davis?

A. Oranges and lemons; he did not say where I would find Mr. Davis.

Q. 65. When did you leave Louisville?

A. I think it was last November the last time I was there.

Q. 66. When did you come to Detroit this last time?

A. Tuesday morning, this week.

Q. 67. When were you last here before that?

A. Last week.

413 Q. 68. When did you arrive here that time?

A. I think it was somewhere near the 8th of June, if I remember right.
Q. 69. When were you here before that?
A. Don't remember.
Q. 70. Within three or four years?
A. Nearly every month since September, 1870.
Q. 71. Did any person say anything to you about how that box was constructed at any time since you saw it?
A. No, sir.
Q. 72. Where did this box stand at the Jefferson Avenue House?
A. In a shed between the back kitchen and the barn.
Q. 73. What kind of a shed was this?
A. If I remember, it was a frame shed.
Q. 74. Was it attached to the house or barn?
A. I think it was attached to both.
Q. 75. Was the barn brick or wood?
A. Don't remember.
Q. 76. Was the shed on a level with the back kitchen or not?
A. I don't remember.
Q. 77. Are you sure there were two kitchens there?
A. They might have had three for all I know; I am not sure; I mentioned back kitchen as the back part of the house.
414 Q. 78. What else was there in the shed besides this box?
A. Don't know.
Q. 79. How many times were you in this shed?
A. Several times.
Q. 80. How many different ways were there of getting into the shed, and what were they?
A. I think there were two: one from the house and one from the barn. The one from the house was out of the kitchen, as near as I remember.
Q. 81. How high and how large was this shed?
A. Not being interested, I don't remember.
Q. 82. Did the top of this box come off?
A. No, sir.
Q. 83. Did the tube run up through the top of the box?
A. Yes, sir.
Q. 84. What kind of a cover was there to the tube?
A. I don't remember what the material was; might have been wood or something else; I don't remember.
Q. 85. How was it fastened on to the tube?
A. I think it sat right over.
Q. 86. Was it round or square?
A. Round.
Q. 87. How large?
A. Large enough to cover the tube.
Q. 88. (Question repeated.) How large?
A. It might have been a foot; don't remember just how large.
415 Q. 89. How was the box constructed on the inside?
A. A plain box, a tube running up from bottom to top, through the centre.
Q. 90. Was that all there was to it?
A. It was all the finish I saw about it.
Q. 91. You saw the inside, did you not?
A. Yes, sir.
Q. 92. Did you see the cover to the tube taken off?
A. Yes, sir.

Q. 93. How many kitchens did Mr. Davis have on Congress street?
A. I don't remember; I think he had but one.
Q. 94. This is the one the box stood in, was it not?
A. Yes, sir.
Q. 95. Was it the same box he had on Jefferson avenue?
A. I always supposed it was the same box.
Q. 96. Did he have fish in it when it stood in the kitchen on Congress street?
A. I don't know; I never examined it there.
Q. 97. How many times did you see it on Congress street?
A. I can't tell; I don't remember.
Q. 98. Did you move with Mr. Davis from Jefferson avenue to Congress street?
A. I did not.
416 Q. 99. Where were you boarding when Mr. Davis moved from Jefferson avenue to Congress street?
A. I believe I was visiting at my uncle's.
Q. 100. How soon afterwards did you go to Mr. Davis' to board?
A. I think I went there in May, on Congress street; I don't remember exactly; it was soon after Davis moved to Congress street.
Q. 101. How long before he moved did you go to your uncle's?
A. I don't remember the exact time.
Q. 102. Where is your uncle, R. S. Gee, now?
A. I don't know.
Q. 103. Do you owe William Phelps anything at this time?
A. I claim I do not.
Q. 104. Did you not collect money due to Mr. Phelps which you never paid over?
A. No, sir.
Q. 105. Did you not collect money due to the firm of which Mr. Phelps is a member which you never paid over?
A. No, sir; not a dollar.
Q. 106. Which side of Jefferson avenue and between what streets was this house where Davis lived?
417 A. The north side, between Beaubien and Antoine streets.

GEORGE H. HARRINGTON.

Subscribed and sworn to before me.

DON M. DICKINSON, *Examiner.*

Adjourned by consent of counsel to June 26th, 1872, at 9 a. m.

TUESDAY, *June* 26, 1872, 9 a. m.—Further adjourned to Wednesday, July 3d, 1872, at 9 a. m.

DON M. DICKINSON.

JULY 3, 1872, 9 a. m.—Mr. Kent appears for the defendants, and Mr. Holmes for complainant.

DANIEL Y. HOWELL, a witness produced on behalf of the defendants, being duly sworn and examined, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?
418 A. Daniel Y. Howell; residence, Toledo; age, about fifty; and occupation, a wholesale dealer in fresh, salt, and frozen fish, and also in hides, pelts, furs, and wools, &c.
Q. 2. Do you freeze fish; and if so, how long have you frozen them? (Objected to as immaterial.)
A. I do freeze fish; last fall was the first—one year.

Q. 3. How many did you freeze—this last fish?
(Objected to as irrelevant and immaterial to the issue.)
A. Thirty thousand pounds.
Q. 4. State the process by which you froze them.
(Objection continued.)
A. I built me a box, placing galvanized-iron plates transversely across the box, one and one-half inches apart, forming cells for fish and freezing-mixture alternate, placing fish in every alternate cell and ice and salt in every alternate cell; let them remain until frozen; after they were frozen I took them out, and put them into a refrigerator or preserving-room, where they remained until sold.
Q. 5. Whose patent, if any, did you use?
(Objection continued.)
A. A patent which was granted to me December 6th, 1870, by the Patent-Office at Washington.
419 Q. 6. Have you a copy of the specifications and drawings of this patent; and if so, will you produce them and allow them to be attached as exhibits?
(Objection continued and the introduction of the exhibits objected to for the same reasons.)
A. I have and will; I hereby produce them.
(There are two papers here produced by the witness, and marked by the examiner Exhibit P and Exhibit Q.)
Q. 7. In the working of this apparatus, what, if any, communication is there between the fish or other articles to be frozen and the freezing-mixture?
(Objection continued and question also objected to, as calling for evidence not admissable, the drawings and specifications having been already put in.)
A. There is no communication, or but very little, from the ice and salt, except, when bunglingly used, some salt and ice may get in; there is no further communication, except the cold atmosphere contained in the box, that can circulate through the matter to be frozen. The idea which I wish to convey is, that the box is neither air-tight nor water-tight.
Q. 8. State whether or not the air circulates freely between the chamber containing the freezing-mixture and that containing the articles to be frozen.
(Objection continued.)
A. There is nothing to prevent the air from circulating; there
420 is nothing to prevent the chambers from filling with air or water, if you put it into the box; there is nothing air or water tight.
Q. 9. How do you preserve the fish or other articles after they have been frozen by the process described?
(Objected to as immaterial and irrevelant to the issue.)
A. By placing them in a preserving-room and running the temperature down to twelve degrees Fahrenheit.
Q. 10. Have you a patent for this preserving-chamber; and, if so, will you produce copies of the specifications and drawings?
(Objection continued, and introduction of the exhibits, for the same reason.)
A. Yes, I will.
(Specifications and drawings (copies) introduced, and marked Exhibits R and S.)
Q. 11. In the working of the apparatus described in Exhibits R and

S, what, if any, communication is there between the articles to be preserved and the freezing-mixture?

(Objected to as before, and as calling for testimony not admissable after the introduction of the patent.)

A. There is no communication except atmospheric communication.

Q. 12. Is this free?

(Objection continued.)

421 A. There is two holes at the top of the receptacle and one at the bottom, which will let the warm air pass in at the top and out at the bottom with the water; I don't know whether a man could call it right free; it isn't air-tight; there is a communication; it would be like passing through window-blinds.

Q. 13. What success did you have in freezing and preserving by the apparatus you have described and the amount of fish you have mentioned?

(Objected to as immaterial and irrelevant to the issue.)

A. Excellent; I didn't lose a pound of fish.

Q. 14. How long did you preserve them?

(Objection continued.)

A. From September until February.

Q. 15. How long did it take to freeze fish in the manner you have described?

(Objection continued.)

A. From one to two hours.

Q. 16. Have you seen fish frozen by any other apparatus in which there has been direct atmospheric communication between the fish to be frozen and the preserving-mixture?

(Objection continued.)

A. I have seen fish frozen by the Davis patent where there is a communication; I would hardly call it direct, and still there is nothing to prevent the circulation that I could see.

Q. 17. Describe the apparatus for freezing to which you now refer, and the method of using it.

422 (Objection continued; also objected to as calling for evidence not admissable.)

A. I would say the apparatus consists of a pan, in which the fish is placed, then covered with another pan of like shape, but a little larger, to prevent the salt water from dripping into the pan containing the fish; said pan surrounded with salt and ice; you can put as many pans into a box as you choose, according to its size, putting in alternately layers of pans and layers of salt and ice.

Q. 18. Do you know with what success this last apparatus has been used?

(Objection continued.)

A. Excellent.

(Answer objected to as above; also as inadmissable.)

Q. 19. Who, if anybody, in Toledo, do you know to have used this last-mentioned apparatus?

(Objection continued.)

A. The firm of Beatty, Davis & Norton, Saint John & Buck, and Jonah Crowell.

(A freezing-pan is now put in evidence, marked T.)

(Introduction of Exhibit T objected to for same reason as before stated.)

Q. 20. Is Exhibit T a pan of the kind you have just described, calling it the Davis pan?

423 (Objection continued; and the question and Exhibit T further objected to as not inadmissable, it appearing that a patent has been issued to Mr. Davis for the apparatus described.)

A. Yes, sir.

Q. 21. Have you often seen this pan in use?

(Objected to as immaterial and irrelevant to the issue.)

A. I have; four or five hundred of them at a time.

Cross-examination:

(De bene esse, without waiver of objections already taken.)

Q. 1. The pans like Exhibit T are freezing-pans, are they not?

A. Yes, sir.

Q. 2. What becomes of the fish after they are taken out of these pans?

A. They are put into a preserving-room.

Q. 3. Is this preserving-room constructed according to the Davis patent, do you know?

A. I do not.

DANIEL Y. HOWELL.

Subscribed and sworn to before me this 3d day of July, 1872.

DON M. DICKINSON, *Examiner.*

Adjourned until 2 p. m.

424 WEDNESDAY, July 3d, 1872—2 p. m.—Mr. Kent, for defendants; Mr. Holmes, for complainant.

CHARLES SCOTT, a witness produced on behalf of defendants, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and ocupation?

A. Charles Scott; age, 33; residence, Toledo, Ohio; occupation, wholesale grocery business at present.

Q. 2. Have you ever worked in the business of freezing fish; if so, when and where, for whom, and how long?

A. I have; two seasons last fall and a year ago last fall; at Toledo, Ohio; at J. Crowell's fish-house; worked for J. Crowell.

(Answer objected to by Mr. Holmes as immaterial and irrelevant to the issue.)

Q. 3. About how many fish were frozen by J. Crowell & Co. while you were at work for him?

(Objected to as immaterial and irrelevant to the issue.)

A. About one hundred and twenty-five tons in two seasons.

Q. 4. How were the fish frozen?

(Objection continued.)

A. In pans like Exhibit T.

Q. 5. How were they preserved after being frozen?

425 (Objection continued.)

A. After being frozen in pans like Exhibit T they were put in a box or refrigerator—an ice-box on a large scale, built for that purpose, and kept cold by ten receptacles, which were charged with ice and salt, and the waste-water from the receptacles ran from them into a trough on the bottom of the box.

Q. 6. Where were the fish put in this box?

(Objection continued.)

A. They were laid on a crate, about three inches from the floor, and piled up. The crate was made of slats.

Q. 7. What communication was there between the bottom of the floor where the trough was and the fish?

(Same objection continued.)

A. The trough ran clear around the floor, the same as an eave-trough to a house; the water would not touch the fish; the slats were made to prevent this. The air passed freely between the two—the fish and the trough.

Q. 8. How did you succeed in freezing and preserving fish by these apparatuses?

(Objection continued.)

A. Very well. We lost no fish.

Q. 9. How long did you keep the fish preserved in the apparatus you have described?

(Objection continued.)

A. Three to four months.

426 Q. How long did it take to freeze the fish in the apparatus described?

(Objection continued.)

A. I don't know as I ever timed it.

Cross-examined by Mr. Holmes, without waiver of objections already taken:

Q. 1. During what season of the year were the fish kept in this preserving-chamber?

A. In the fall and winter.

Q. 2. Did you attend the apparatus yourself?

A. I did, with assistance the first season; also the second season.

Q. 3. You say you lost no fish; were all the fish in the chamber equally well preserved?

A. Yes, sir.

Q. 4. Did you ever see a rusty fish?

A. I have seen rusty salt fish, but not rusty fresh fish.

Q. 5. Were the fish piled in all parts of the preserving-chamber equally?

A. Yes.

Q. 6. In what part of the chamber was the trough?

A. The lower out-edges on the inside.

Q. 7. Do you mean that this trough run all around the sides of the room next to the wall?

A. Yes, sir.

427 Q. 8. How did the waste-water get from the receptacles into the trough?

A. By a lead or pewter pipe, about an inch in diameter—a waste-pipe.

Q. 9. How long was this pipe?

A. I should think about five or six inches; I couldn't tell exactly.

Q. 10. Do you know what the temperature of the preserving-chamber was?

A. Yes, sir; twenty-four to twenty-six.

CHARLES SCOTT.

Subscribed and sworn to before me this 3d day of July, 1872.

DON M. DICKINSON, *Examiner.*

JOHN SKEHAN, a witness produced and sworn on the part of the defendants, being examined, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Skehan; twenty-five years old; residence, Toledo, Ohio; occupation, working for J. Crowell, a fish dealer.

Q. 2. Have you been engaged in freezing fish for Mr. Crowell; and if so, when and for how long?

A. Yes, for two seasons—last fall and a year ago last fall.

428 Q. 3. About how many fish did Mr. Crowell freeze and preserve these two seasons?

(Objected to as immaterial and irrelevant to the issue.)

A. I can't tell; I don't know how many tons.

Q. 4. By what apparatus did he freeze his fish?

(Objection continued.)

A. By Davis's patent pan, of which Exhibit T is a specimen.

Q. 5. How did you freeze fish with this pan?

(Objection continued.)

A. We put the fish in a pan and put the cover on, and then set the pan on about two inches of ice and salt, and then covered it up with about the same quantity of ice and salt again; we then put another tier of pans and of ice and salt, and so on—a tier of pans and one tier of ice and salt.

Q. 6. How did you preserve the fish after they were frozen?

(Objection continued.)

A. In a refrigerator. It was a large box, with ten receptacles for ice and salt in it. The fish were piled up on a rack near the floor—about three inches from the floor.

Q. 7. Where was the water from the receptacles discharged?

A. Into a trough running round the box by the wall.

429 (Objection continued to last question.)

Q. 8. Was there atmospheric communication between the water in this trough and the fish in this chamber?

(Same objection continued.)

A. Yes.

Q. 9. How did the fish keep by this process?

(Objection continued.)

A. They kept well.

Q. 10. For how long?

(Objection continued.)

A. For three or four months; that was as long as we kept them.

Cross de bene, without waiver of objections already taken:

Q. 1. Were any salmon ever preserved in this apparatus?

A. Not to my knowledge.

Q. 2. What kind of fish were kept in it?

A. White fish and pickerel, grass-pike and muskalonge.

Q. 3. At what seasons of the year?

A. Fall and winter.

Q. 4. From what month to what month?

A. We began freezing late in the fall.

Q. 5. Who has been employed there with you?

A. Several; Charles Scott for one.

430 Q. 6. These ice-receptacles were placed along the sides of the preserving-chamber, were they not?

A. Yes, sir.

Q. 7. How were they filled with ice and salt?

A. From the top.

Q. 8. Do you mean from the room above the chamber?

A. Yes, sir.

Q. 9. How large is the chamber?

A. I think it is about eleven or twelve feet wide, nine feet deep, and twenty foot long.

Q. 10. How large was each ice-receptacle?

A. Nine feet deep and four feet wide, I believe; four feet across; I don't know exactly the thickness of them.

Q. 11. How big was this trough?

A. About the size of an eave-trough—the common size—about four inches across the top.

Q. 12. There was no communication, was there, between the contents of the ice-receptacles and the atmosphere of the chamber?

A. Yes, sir, there was.

Q. 13. What was it?

A. An open pipe—an inch-pipe—where the water ran through.

Q. 14. You mean the drain-pipe from the receptacle to the trough, do you not?

A. Yes, sir.

Q. 15. Was this drain-pipe straight or curved?

A. There was a curve in it.

431 Q. 16. It is what is called a goose-neck, is it not?

A. I don't know whether it is or not; there is an elbow in it.

Q. 17. The pipe curves upwards after leaving the receptacles, then downwards into the trough, does it not?

A. No, sir; it don't curve upwards; it comes out straight, then downwards into the trough.

Q. 18. How much water was there in this trough when the apparatus was in use?

A. I couldn't tell; it was running in and running out. I couldn't tell whether it was full or not. It was filled up with fish, and I could not get at it.

Q. 19. Was the chamber full of fish?

A. It was a year ago last fall; last fall it was not quite full.

Q. 20. Were they piled up equally all over the floor?

A. Yes, sir.

his
JOHN + SKEHAN.
mark.

Subscribed and sworn to before me this 3d day of July, A. D. 1872.
DON M. DICKINSON, *Examiner.*

(The witness being disabled in his right hand, and unable to write, Mr. Holmes consents that the examiner sign his name, and the examiner does so by the witness' direction.)

432 By consent of counsel here present the further examination is here adjourned sine die.

STATE OF OHIO, *Franklin Co., City of Columbus, ss:*

I, James A. Wilcox, (a United States commissioner for the southern district of Ohio, and counsellor at law, of Columbus, Ohio,) do hereby certify that on the 25th day of April, A. D. 1872, at my office in the city of Columbus, in the State of Ohio, in accordance with the two orders hereto annexed, personally came Jonathan F. Neereamer, Simon Fought, and Jacob I. Ritze, on the part of the defendants, and Charles A. Wagner, James Farr, Joseph Finger, Hiram Simonton, and Peter Ambos, on the part of the complainant, who, after being carefully examined, cautioned,

and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause named in the caption of these depositions, did respectively, and each for himself, in my presence, subscribe the foregoing depositions, after the same were reduced to writing by H. C. Kronenbitter, who is a disinterested person, and that said depositions, after being thus taken, were by me sealed up and directed to the clerk of said court, and retained in my hands until they were deposited by me in the post-office at said Columbus on this 27th day of April, A. D. 1872.

JAMES A. WILCOX,
Special Examiner.

433 JONATHAN F. NEEREAMER, of lawful age, who being first duly sworn according to law, deposes and says, in reply to the interrogatories propounded, as follows, to wit:

Q. 1. What is your age, residence, and occupation?

A. I am almost forty-eight; residence, 324 South Front street, Columbus, O.; present occupation, an insurance agent, formerly a confectioner.

Q. 2. How long have you resided in Columbus?

A. From my birth to the present time.

Q. 3. Were you ever acquainted with William Davis, the father of Samuel H. Davis and David W. Davis; and if so, when and for how long?

A. I was; I became acquainted with William Davis in 1849; in 1851, in April, I commenced work for Mr. Davis at a place called Northwood; worked for him during that summer from three to five days a week, at my trade as a confectioner, manufacturing ice-cream and making cakes for him.

Q. 4. While there, did you know anything of his preserving fish or meats by artificial means?

A. I did, if preserving fowls is considered preserving meats.

Q. State what you know.

A. While manufacturing ice-cream there, Wm. Davis frequently consulted with me in regard to freezing-matters, as to the length of time, the quantity of ice and salt that it would require to freeze creams, with a view of applying it to meats; he had a large box made and placed in a separate apartment in the cellar of his house, separate from
434 the cellar where I made the cream; he frequently used some worn-out ice-cream freezers, in which he packed spring chickens, packed in ice and salt; these were left, I can't tell you how long, in these freezers, but were removed to this large box or chest, whichever it might have been, where they were kept for use as they might be required. The thing to fasten more permanent data in my mind was from the fact that, on the 25th day of July, A. D. 1851, after a very laborious day's work, and expecting every hour to have my wife send for me—I expecting her then to be confined—Mrs. Davis, that is the wife of Wm. Davis, went to this chest and took out a pair of chickens and made me a present of them—these chickens having been in this chest over ten days to my knowledge. The reason I know of this date is, my oldest child was born on the 26th day of July, at six o'clock, Saturday morning. These chickens were thoroughly frozen when handed to me.

(Answer objected to as far as it stated the views of Davis in making the inquiries spoken of.)

Q. 5. In what was the chickens put, and where was the ice and salt at the time of the freezing?

A. These chickens were froze in common ice-cream freezers, packed

around the outside with ice and salt, and remained in those freezers without the process of agitation (for we have to agitate cream) until they were thoroughly frozen, and then taken from this freezer and placed in this chest I speak of.

Q. 6. When you speak of the ice and salt being packed on the outside, do you mean on the outside of the ice-cream freezer?

435 A. I do. In the manufacture of cream, after adding our sugar to the cream, if we desire to freeze, we break up the ice small, then add a certain quantity of salt to every bushel of ice; this is then put into a vessel, and the vessel is set into a wooden tub; the ice and salt is then packed around the vessel in the tub.

Q. 7. Did you keep up your acquaintance with William Davis after he moved from Northwood into the city of Columbus?

A. I did, until he left the city of Columbus.

Q. 8. Did you know anything of his freezing by artificial means while in Columbus?

A. About two years, or perhaps more, after I worked for him he kept a fish establishment on High street, in Columbus, where there is now a big four-story brick building, occupied by a dry-goods establishment, by Dunn, Brown & Co.; the building Mr. Davis occupied is removed or torn down; he and his son Samuel were both there together—whether partners or not I am unable to say; they then kept frozen fish during the summer; I bought them sometimes from one and sometimes from another; I might add, there Mr. Davis always had fish in the market during the summer at that time.

Q. 10. State, if you know, how the frozen fish to which you referred were frozen.

A. I know how they were frozen, but how they were kept after frozen I am unable to state.

Cross-examination:

Q. 1. How were they frozen?

436 A. Well, sir, they were packed in tin cans; there was a large tub taken and a quantity of salt and fine ice thrown in the bottom; then the can was placed on this ice, and the can then buried in a mixture of salt and ice; then this whole tub was covered tightly, almost to exclude the air, with cloths thrown over it, and a cover; the length they remained there I am unable to state.

Q. 2. While Mr. Davis was at Northwood, were you living in the house there with him?

A. I was not; he took me up in the morning and returned me in the evening.

Q. 3. Were you at work there every day?

A. No, sir; from three to five days a week.

Q. 4. On any particular days, or only as you were wanted by Mr. Davis?

A. I was engaged by him for the whole season, as I might be wanted.

Q. 5. How long did you thus work for him?

A. I should think until the latter part of September; so far as the season should run; I began in April, 1861.

Q. 6. You have spoken of a large box which Mr. Davis had at Northwood; do you know how that box was constructed?

A. So far as the internal arrangement of the box I know nothing about it; externally, it looked like all appearance a common refrigerator; it was a large box, 6 feet long and about 4 feet, and 3½ feet wide, as nearly as I recollect.

Q. 7. Did Mr. Davis keep anything else in this box; and if so, what?

437 A. I don't know of anything else; Mr. Davis was very particular about his secret and did not consult me much about frigorific mixtures.

(All after the word "know" objected to as irresponsive.)

Q. 8. Without waiver of objection just taken, what was Mr. Davis' secret?

A. It was freezing chickens and preserving them.

Q. 9. Do you mean the process which you have already described?

A. The process of freezing chickens—I do; that was the secret.

Q. 10. Where did Mr. Davis get the chickens you have spoken of?

A. I suppose he bought them in market; I don't know.

Q. 11. Whenever he got chickens did he always subject them to this process you have spoken of?

A. So far as I know he did.

Q. 12. How many times do you know that chickens were frozen in this way by Mr. Davis at Northwood?

A. Some eight or ten times.

Q. 13. Under what circumstances was this done?

A. It being warm weather and wanting to keep them for a party.

Q. 14. Did you examine the chickens each of these eight or ten times?

A. I did not; only, as occasionally, as I would see them coming out.

438 Q. 15. How many times did you ever examine the chickens yourself, personally?

A. I can't refer any particular time that I made a thorough examination of any chicken or chickens coming out of the freezer; but the two above referred to, which Mr. Davis gave me there, I did. I brought them home perfectly solid.

Q. 16. Do you know that this pair of chickens was in an ice-cream freezer before Mrs. Davis took them out of the chest and gave them to you?

A. I believe I do, as all the chickens that went into that chest went through the same process.

Q. 17. How many of these old ice-cream freezers were used in this way?

A. I can't tell how many he had for that purpose. Those things were not under my charge.

JOHN NEEREAMER.

SIMEON FOUGHT, of lawful age, who, being first duly sworn according to law, deposeth and says, in reply to the interrogatories propounded, as follows, to wit:

Q. 1. What is your name, age, residence, and occupation?

A. I was fifty-eight last February. I was formerly a blacksmith, but do not work at it now. My residence is the city of Columbus. At the present time I am assessor of the 7th ward.

439 Q. 2. How long have you resided in Columbus, O.?

A. I came here in 1837, and have resided here ever since.

Q. 3. Were you ever acquainted with William Davis, the father of William H. and Samuel W. Davis; and if so, when did your acquaintance begin?

A. I was acquainted with him, and, to the best of my knowledge, the acquaintance began in 1850.

Q. 4. Did you know him when he resided at Northwood?

A. Yes, sir; I knew him all the time he lived there.

Q. 5. What was his business there?

A. His principal business was keeping a house of pleasure resort—a refreshment place.

Q. 6. Were you often at his house while there?

A. Yes, sir; I was there nearly every day.

Q. 7. Did you know anything of his preserving there chickens, fish, or meat by artificially freezing them?

A. He took me down at one time to his cellar, opened a box, and showed me. I saw chickens in there, and meat and beefsteak, and I think I saw fish in there. Previous to going down to the cellar I saw some spring chickens, which were setting on a table on a plate. I noticed that they were frozen. I put my finger on one of them, and that led to a conversation with Mr. Davis, and he told me about his freezing-apparatus in the cellar. That is the time I went down in the cellar. He asked me to go down, and I went. I have no recollection of seeing the apparatus but once.

440 Q. 8. So far as you can, describe that apparatus.

A. I don't think I can. I didn't examine it very particularly. I noticed that the chickens and the meat that were in there were separate and apart from the freezing apartment. It was all included in the same box, though. I do not believe I can give the size of the box, it is so long ago.

Q. 9. Did you know Mr. W'm Davis after he removed from Northwood to Columbus?

A. Yes, sir.

Q. 10. What was his business in Columbus?

A. His principal business was bottling ale. I am not certain whether he kept boarders or not; it seems to me that he did. It is so long ago, I do not know whether he was engaged in the fish business or not.

Q. 11. Do you know of his ever having any artificially-frozen fish in Columbus?

A. I know they were engaged in the fish business in Columbus some time between 1853 and 1855. I frequently bought fish from them while they were selling fish here.

Q. 12. State the condition of the fish you bought.

(Objected to as leading, because the witness, having answered question 11, was asked whether any of these fish were frozen, which question, on objection, was withdrawn and immaterial.)

A. I know that they were artificially frozen.

Q. 13. Did you buy such frozen fish of them often?

441 (Objection continued.)

A. I have, a good many times; I can't tell how often.

Q. 14. When you say they were engaged in the fish business in Columbus, whom do you mean by they?

A. I mean W'm Davis, and I think he and his son and he were in partnership. I think he told me so.

Q. 15. What season of the year was it when you bought these frozen fish?

A. It was in the summer season.

Q. 16. Where was their place of business at the time you bought these fish?

A. It was on High street; I am not sure whether between Broad and Gay or Gay and Long.

Q. 17. Of what person did you buy these frozen fish?

A. I bought them of different members of William Davis' family—of David and of W'm Davis, jr.

Q. 18. Was there any son of William Davis whose name was William Davis, jr.?

A. There was one who went by that name whom I supposed to be his son—I mean Samuel Davis, not William. It was a mistake of mine. If there was a William Davis, jr., I did not know him.

Cross-examination:

Q. 1. Describe the apparatus that you saw at Northwood, as well as you can.

A. It was a large box. I think the vessel which contained the
442 fish and meats was tin; I didn't examine it closely. I don't know whether I can give any more description of it.

Q. 2. Where was it that you saw this apparatus?

A. Where Mr. Davis lived, at Northwood.

Q. 3. Can't you fix the date nearer than that?

A. No, sir.

Q. 4. Can't you describe the apparatus more definitely than you have done?

A. I don't think I can.

Q. 5. You have said it was a box, have you not?

A. Yes, sir.

Q. 6. Was it a long box?

A. It was longer than it was wide. I didn't measure it.

Q. 7. How long; 8 feet?

A. Probably 6 or 8 feet long—somewhere in that neighborhood. I never expected to be called upon to testify about that box, or I would have examined it more minutely.

Q. 8. Was it a round box?

A. No, sir.

Q. 9. How many compartments were there in it?

A. I did not see but two.

Q. 10. Was it a square box?

A. No, sir; it was longer one way than the other.

Q. 11. Did it have a cover to it?

A. Yes, sir; a cover, or lid, with hinges to open.

Q. 12. Did you ever see any other box except this one at Northwood?

443 A. Not in the cellar; I did not. I saw boxes around the house—ordinary boxes.

Q. 13. Did you see anything else in the box except meats, &c.?

A. I seen chickens and fish. There may have been other articles in; I don't recollect.

Q. 14. Where was this box?

A. It was in the cellar.

Q. 15. In what part of the box were the meat, fish, &c.?

A. To the best of my knowledge, in the centre of the box.

Q. 16. How were they placed in the box?

A. I can't tell that now.

Q. 17. Were they piled up in the centre of the box, or arranged on shelves?

A. I don't recollect about that. It has been so long I can't give the particulars.

Q. 18. Did you examine the box at all?

A. Only just to look in.

Q. 19. Where was the ice in the box?

A. I couldn't tell you how it was arranged. I didn't examine it very closely.

Q. 20. Did you or Mr. Davis take any of the articles out of the box and examine them?

A. I did not. I don't recollect whether he did or not.

Q. 21. Then, you don't know whether they were frozen or not?

444 A. I know those I looked at before I went down into the cellar were frozen. I touched one of them. I know them in the box looked just like them I saw before I went down.

Q. 22. What did you see before you went down into the cellar?

A. I saw some dressed chickens.

Q. 23. Cooked or uncooked?

A. Uncooked.

Q. 24. Then, all you mean to say is, if I understand you, that you saw and touched up stairs chickens which you supposed to be frozen, and when you went down into the cellar you saw in this box meats, fish, and chickens which looked just like the chickens you had seen up stairs. Am I correct?

A. Well, I think that is about the substance. I know those up stairs were frozen.

Q. 25. How do you know it?

A. I felt of them.

Q. 26. How did that tell you they were frozen?

A. They were cold and stiff, and I was satisfied that they were frozen.

Q. 27. Were the meat and fish and chickens all in the same compartment of the box you saw in the cellar?

A. I think they were.

Q. 28. Have you given an affidavit in this cause?

A. Yes, sir.

Q. 29. Is the one now read to you the one to which you swore?

445 "Simeon Fought, being duly sworn, deposes and says: I am fifty-seven years old. I am a resident of Columbus, in the State of Ohio; was acquainted with William Davis during his residence in the city of Columbus; was a visitor at said Davis' when said Davis owned and resided at Northwood, in eighteen hundred and fifty-two. I have frequently seen at said Davis' residence (Northwood) refrigerators for the preservation of fish, meats, poultry, &c.

"Have seen said Davis take from these refrigerators fish, poultry, &c., in a frozen state; and they were constructed in two separate apartments, to wit, one apartment to contain the articles to be preserved or frozen, and the other apartment the refrigerants. Said Davis was using these freezers publicly.

"Said Davis was engaged in the fish business in this city, and removed to Detroit in eighteen hundred and fifty-five.

"SIMEON FOUGHT.

"Subscribed and sworn to before me this 23rd day of November, 1871.

[SEAL.] "G. G. COLLINS,
"Notary Public."

A. Yes, sir. I don't mean to say that I frequently saw the box, but I frequently saw the chickens that were taken from it. What I meant about publicly used was, I knew a number of people who knew about

it that have since died. I believe that is all the explanation I wish to make.

(All after the words "Yes, sir," objected to as irresponsive and inadmissable.)

446 Q. 30. What kind of fish were these, if you know, that you seen at Northwood?

A. I know I seen bass there.

Q. 31. What is the season for bass here?

A. We catch them from early spring until late in the fall.

Q. 32. When you bought frozen fish of Mr. Davis and his son in Columbus, how were the fish frozen, if you know?

A. I didn't see them frozen. I only know that they had been frozen. I think that is all I know about it.

Q. 33. How many times did you buy frozen fish of them in Columbus?

A. Very frequently; impossible to tell the number of times.

Q. 34. What kind of fish?

A. White-fish, cat-fish, and different kinds.

Q. 35. Did you always buy frozen fish of them?

A. All the time he was doing the fish business here.

Q. 36. What is the season of white-fish here?

A. Pretty much all the year round. I know I bought them frequently in hot weather.

Q. 37. What is the season of cat-fish here?

A. Well, pretty much the same.

Q. 38. Did you ever buy frozen fish of anybody else but Mr.

447 Davis?

A. I have frequently bought fish here since he left here which I supposed were frozen. I don't know by whom they were put up. I bought them in the market.

Q. 39. Did you ever buy any frozen fish from any one but Davis before he left here?

A. I don't know that I did.

Q. 40. Do you mean to say that you never did?

A. Well, it is so long ago that I can't tell who I bought fish from before that.

Q. 41. Did you ever buy frozen fish of anybody except the Davises before Mr. Davis left Columbus?

A. I don't think I did.

Q. 42. Can you say whether you ever did or not?

A. I can only say I don't think I did. I have no recollection as to that fact.

Q. 43. Did you pay Mr. Davis any more for frozen fish than for fresh ones?

A. I don't know whether I did or not.

Q. 44. State, as exactly as you can, where this box at Northwood was situated in the house.

A. I think I have already stated that it was in the cellar.

Q. 45. Can you not fix its position in the cellar any more definitely?

A. I don't know as I can; it is a long time ago, and I don't recollect that I was ever down there but once.

Q. 46. How wide and how high was this Northwood box, if you remember?

A. I can't tell that; I didn't measure.

448 Q. 47. You say that you have bought frozen fish, or fish that you supposed to be frozen, from other parties since Davis left Columbus; from whom did you buy them?

A. I couldn't tell; don't know the names.

Q. 48. When was it?

A. I can't give the year. It was after Davis quit bringing fish here [It may have been some he put up.]

(Part in brackets objected to as irresponsive and inadmissable.)

Q. 49. What kind of fish were these?

A. White-fish, cat-fish, and perch.

Q. 50. Were they bought in the market here?

A. Yes, sir.

Q. 51. Did you buy them within five years?

A. I think I did.

Q. 52. Any longer ago than that?

A. Certainly. I think I bought them further back than five years ago.

Q. 53. As much as ten years ago? I mean frozen fish of other people besides Davis.

A. I couldn't tell that.

Q. 54. Then, you mean to say that you have bought frozen fish here, in the market, of others than Davis, as much as five years ago, but whether you bought them as much as ten years ago you are unable to say. Am I correct?

A. Yes.

449 Q. 55. Can you tell whether you so bought them, not of Davis, as much as fifteen years ago?

A. It would be impossible for me to tell that now.

Q. 56. Can you tell when you bought them of Davis?

A. I can't fix any date. It was while he was doing business here. I bought more or less while he was doing business.

Q. 57. When you bought of Davis frozen fish, where did you buy them?

A. Sometimes at the shop and sometimes at the market-house.

Q. 58. Do you know the names of any other fish-dealers here while Davis was here?

A. I don't know of but one—David Joyce; he is dead. I can't give the names of any fish-dealers since Davis left here.

SIMEON FOUGHT.

JACOB S. RITZE, of lawful age, who, being first duly sworn according to law, deposeth and says, in reply to the interrogatories propounded, as follows, to wit:

Q. 1. What is your age, residence, and occupation?

A. I was born June 2d, 1828, at Zanesville, O. I reside at Columbus; came here in 1851, and have been here ever since. My occupation is a confectioner, baker, and restaurant-keeper.

Q. 2. Were you ever acquainted with William Davis, the father of William H. and David W. Davis?

450 A. I was well acquainted with him when I came here in 1851. He was keeping Northwood. I went there often to parties and dances, and supplied him with things in our line—confections.

Q. 3. Did you know him after he moved into Columbus?

A. Yes, sir.

Q. 4. Did you ever buy fish of him when he was living in Columbus?

A. Yes, often; fish and game.

Q. 5. What season of the year was it when you purchased fish of him?

A. All the season round when you could get them; some seasons you can't get them.

Q. 6. What was your business when you bought these fish of Mr. Davis?

A. I was clerking for P. Ambos & Co., who were confectioners and restaurant-keepers.

Q. 7. How many fish did you buy of Mr. Davis at this time?

A. There was no regular amount. We bought whatever we wanted to serve us through the day.

Q. 8. State if you noticed anything peculiar about these fish, or any of them.

A. I don't know as I could see anything peculiar about them. Some days it was pretty hot, and fish wouldn't keep so long.

Q. 9. State whether any of the fish you bought of Mr. Davis at this time were frozen or not.

451 (Objected to as leading.)

A. Not at one time; sometimes they were frozen and sometimes they were not.

Q. 10. How often were the fish thus bought frozen; quite often or rarely?

A. That's so long ago I don't know as I can remember how often; sometimes I was there when the fish came and sometimes I was not; can't remember how often.

Q. 11. Can you tell whether you purchased frozen fish one hundred times, or no more than five?

(Objected to as improper in form for direct examination.)

A. I can't tell that; it would be impossible. It was certainly more than five times. In hot weather of course they would be frozen; in moderate weather they would not be.

Cross-examination:

Q. 1. What are you doing now?

A. I have been up inspecting water-pipes.

Q. 2. Where have you been inspecting water-pipes?

A. Upon the river, above the water-works, where the pipe foundry is.

Q. 3. Is that your business now?

A. I haven't got any now; it will be as soon as they commence again.

452 Q. 4. Did you not say in your direct examination that your business now is a confectioner, baker, and restaurant-keeper?

A. I did not say so. That was my business at that time when I knew Mr. Davis.

Q. 5. How long since you have been in that business?

A. I can't tell; I quit the Ambos house in 1861.

Q. 6. What have you been doing since 1861?

A. I had a confectionery of my own for two years in the Neil block. I have been doing anything I could get hold of since then. Last year I was appointed inspector.

Q. 7. You always bought frozen fish in hot weather?

A. Yes, sir, when I could get them.

Q. 8. Frozen fish were not common here in hot weather, were they?

A. We got them when we could.

Q. 9. Question repeated.

A. I can't answer any further than that sometimes they couldn't get frozen fish themselves.

Q. 10. Whom do you mean when you say sometimes they couldn't get frozen fish themselves?

A. I mean the dealers we bought of.

Q. 11. Who were the dealers you bought of?

A. There was Davis, first, and then David Joyce, and there were others that shipped fish through here by railroad; and I bought a great many fish out of the river, sometimes of Charles Wagner.

453 Redirect examination:

Q. 1. Did you buy frozen fish of any one except Davis?

(Objected to as leading and irrelevant.)

A. I don't think anybody else's came frozen just like Davis'. I never saw any that way before.

Q. 2. In what other way were these other fish, not Davis', frozen?

(Objected to as irrelevant, immaterial, and incompetent.)

A. I don't know as they were frozen at all; they came packed in barrels and boxes with ice.

Q. 3. How did the Davis fish come to you; were they packed in anything?

A. They would drive up sometimes and would have them in barrels or boxes. I don't know anything else than that. I didn't notice anything else.

Q. 4. How hard were the fish you bought of Davis frozen?

(Objection continued.)

A. I have seen them so hard sometimes that you would have to thaw them apart.

Q. 5. In what season of the year was this; hot or cold weather?

A. I can't tell exactly; don't remember.

Q. 6. Can't you say whether it was in hot or cold weather?

454 (Objected same as above, and also as leading.)

A. I can't say exactly; I don't remember. I can't answer anything further.

Recross-examination:

Q. 1. Can you state what was in the barrels and boxes when they drove up?

A. I cannot.

Q. 2. State whether there was any ice in the barrels or boxes.

A. Sometimes I went out and got the fish, and there was ice; sometimes I did not go out at all.

Redirect-examination:

Q. 1. Did you ever buy any frozen fish of Davis in the market?

(Objected to as incompetent, not re-examination, having once been gone over, and leading.)

A. Yes, I have.

Q. 2. Were these fish packed in anything in ice, or anything else?

(Objected to as above.)

A. Sometimes in boxes and barrels.

L. S. RITZE.

Testimony for defendants closed in Columbus.

455 WILLIAM W. RILEY, of the city of Columbus, aged 57 years or thereabouts, being produced, sworn, and examined on behalf of the defendants, deposeth and saith as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William W. Riley; age, 57; residence, Columbus, O.; occupation, a dentist, and has been for 30 years.

Q. 2. How long have you resided in Columbus?

A. Since April, 1843.

Q. 3. Were you ever acquainted with W'm Davis, the father of Samuel H. and David W. Davis?

A. Yes, sir; I was very well acquainted with him.

Q. 4. When did your acquaintance with him begin and end?

A. I think in 1844 or 1845 that I became acquainted with him, and ended the last time I saw him here a few years ago, just before he died.

Q. 5. Did you ever live at his house?

A. I did; I boarded with him.

Q. 6. When and where was this?

A. I boarded with him from January, 1850, until July 19th, following, in Dr. Goodale's farm-house, in the city of Columbus.

Q. 7. What was W'm Davis' business at that time, when you boarded with him?

A. He was keeping Dr. Goodale's dairy, and selling fish in the market. He sold lake fish.

456 Q. 8. What method, if any, by preserving fish, did he use at that time?

A. He was a well-educated gentleman, and quite scientific, and constructed a box to put his fish in after they came here. He constructed a box I should think about three and a half or four feet long, and thirty inches high, and about the same width. It looked like a large chest—something like a sailor's chest. He had a smaller box just like it inside of it, leaving a space between the two boxes. This space he filled with a mixture of pulverized charcoal, I think—something dark—for the purpose of keeping the cold in and the heat out—as a non-conductor, I suppose. He had a box inside of the inner box, for the purpose of putting his freezing-mixture in, which was placed either on one side or one end of the inner box, I don't know which; my impression, is across the end. This small box was tight all around, with a lid to it, which closed the freezing-mixture up tight. Whether that box was movable or not I don't know. It seems to me he took it out occasionally to clean it and change the mixture.

Q. 9. Where did he put the fish he wished to preserve?

A. Right in the body of the box.

Q. 10. Which box?

A. In the space left after the box containing the freezing-mixture was put in.

Q. 11. Was there any cover to the inner box, which contained the fish?

A. Yes; it was covered up tight.

457 Q. 12. What, if any, communication was there between the small box containing the freezing-mixture and the place where the fish were put for preservation?

A. I don't think there was any. I think the chill of the mixture in the box was all that preserved the fish.

Q. 13. How often, if at all, did you see the apparatus you have described in operation at that time?

A. I had occasion to see it almost every day. He attended market three times a week. He got his fish the day before, and put them in this box, and took them out and sold them the next day. We had market Tuesdays, Thursdays, and Saturdays. He would get his fish on Mondays, Wednesdays, and Fridays.

Q. 14. What was the effect upon the fish by keeping them in this box which you have described?

A. Occasionally he would not sell all out, and the next market-day they appeared just as good as ever, and sold just the same. We used them in the family also.

Q. 15. How did the fish look and feel when they had been in this box some time?

(Objected to by plaintiff's counsel for form and substance, the witness having already stated what the effect of putting the fish in the box was.)

A. They looked just as well as ever, for all I could see, and felt solid and firm; that was the great object—to have them look well.

Q. 16. State whether or not they were ever frozen.

(Objected to by plaintiff's counsel as leading, and also as before.)

458 A. When he took them out of the box for use in the family he used to put them into cold water a short time, to take the frost out, he said.

(Answer objected to by plaintiff as irresponsive and inadmissable.)

Q. 17. Former question, No. 16, repeated.

A. I think they were frozen; don't remember handling them.

Q. 18. How long did Mr. Davis continue the use of that box while you boarded with him?

A. All the time.

Q. 19. Did you ever see this or a similar box in Mr. Davis' possession at any other time or place, and if so, where and when?

A. I did; Mr. Davis built a small building on High street, in Columbus, between Broad and Gay streets, where Deshler's big building is now, and I saw him selling fish out of a box there; he had a fish-market there; this was about the year 1853 or 1854; it was the last place he was in before he left here.

Q. 20. Whereabouts in that store was this box placed?

A. It was in the back end of the store; he had fruits and other things in front.

Q. 21. How long did this box continue there?

A. I think it continued there after he left; I think his brother-in-law continued the fish business there afterwards; how long I don't know; I was not familiar with him much.

Q. 22. How often did you see this box in rear of the store?

459 A. I passed through daily four to five times, and saw it whenever I had occasion to look into the store.

Q. 23. Did you ever examine the inside of this box at the store?

A. Not particularly; I think it was the same box.

Q. 24. Did you ever see fish in it?

A. Yes; I bought fish out of it.

Q. 25. What season of the year was it when you bought fish out of it?

A. It was in warm weather; can't tell the month; it was in warm weather.

Q. 26. Did Mr. Davis ever at that time explain to you his method of preserving fish in the manner you have spoken of?

A. Yes, sir; he had preserving fish on the brain at that time, I thought; he claimed that he had got up a kind of circulation inside of the box, and that his peculiar mixture was colder than anybody else ever got up, and was therefore better.

Q. 27. State whether or not any of the fish you bought out of the box in the store were frozen.

A. I think they were.

Q. 28. Did Mr. Davis have a fish-stand on the market at the same time he had the box in the store?

A. He did.

Q. 29. How intimate were you with Mr. Davis?

A. I stood in the relation of indorser for him, for several years, but I never lost anything by him.

460 Cross-interrogatories:

Q. 1. You say Mr. Davis explained his method to you, and claimed to have got a circulation inside the box; do you mean circulation of air?

A. I mean a circulation of cold air, as I understood him.

Q. 2. After Mr. Davis left Columbus, did you see him frequently and talk with him up to the time of his death?

A. Whenever he came to Columbus he used to come to see me; I don't think it was very often; half a dozen times probably; I saw him once in Sandusky.

Q. 3. Did he have any preserving-box in Sandusky?

A. I don't know; I was only there at night; he was engaged in the fish business there.

Q. 4. What was the box which contained the freezing mixture made of?

A. It was painted; I think it was made of tin or zinc; it might have been wood; I don't know what material it was made of; it was painted white.

Q. 5. Do you know that any fish were ever frozen in this box?

A. I think they were frozen.

Q. 6. Question repeated.

A. I suppose there are degrees of freezing; they were frozen sufficient to keep them from one market to another; and that is all I know about it.

Q. 7. Did you ever examine the inside of this box particularly?

A. Yes, rather so.

461 Q. 8. Did the fish always come out of the box in the same condition?

A. Yes; they always seemed to be frosted over.

Q. 9. Did the fish come out of the box in the same condition that they went in?

A. They appeared in a much better condition when they came out, so far as cold is concerned, than when they went in; they came to him in boxes or barrels, with ice mixed in, and were more or less bruised by the ice; he used to sort them out into strings of fish, and clean them all off and lay them in this box, and they would come out nice and clean the next morning.

Q. 10. What freezing-mixture did Mr. Davis use in this box?

A. Pulverized ice and salt, perhaps; he, I think, might have had other things, for all I know.

Q. 11. Was Samuel Davis helping his father in business at this time when you boarded with him?

A. Yes; he helped about—selling and stringing up the fish; he was a lad, though.

Q. 12. Was he with his father when he had the box afterwards on High street?

A. Yes, sir; doing the same things, I think; in addition, Samuel sold fruit.

Q. 13. Did you ever see in Columbus any other apparatus or box for preserving fish except the one you have described?

A. Not at that time, except a box in which the loose ice was thrown in in which the fish came.

462 Q. 14. Did the large box in which the others were placed have a cover to it?

A. Yes.

Q. 15. Did this cover extend over the whole of the outside of the box?

A. Yes, it did; it covered all over.

Q. 16. Then inside of this was the small box which held the freezing-mixture, and which had a separate cover of its own, was it not?

A. Yes.

Q. 17. Was this so both in the box at the house and that one at the store on High street?

A. Yes; I think it was identically the same box.

Q. 18. Do you know who made this box for Davis?

A. I think he made it himself.

Q. 19. How do you know there was charcoal in the box?

A. I saw it in the space between the inner and outer box.

Q. 20. Then the charcoal was not covered over, was it?

A. When the lid was down that covered it.

Q. 21. How wide was the space where the charcoal was?

A. I think about three inches.

Q. 22. How big was the freezing-mixture box?

A. I think about six or eight inches wide across the top, and extended to the bottom of the box, and tapered a little towards the bottom, I think; it looked so to me.

463 Q. 23. Did all Mr. Davis' fish come from the lake, and what kinds of fish were they?

A. They all came from the lake; they were white-fish, bass, pickerel, some cat-fish, and may have been other kinds.

Q. 24. Did Mr. Davis have this box at the market at all?

A. I think he took it to the market during the time I boarded with him; after that I don't know; I mean he took it to market every market-day.

WILLIAM W. RILEY.

THE STATE OF OHIO, *Franklin County, ss:*

I, the undersigned examiner, appointed to take testimony in the above-entitled cause, do hereby certify that the above-named William W. Riley, the witness whose name is subscribed to the foregoing deposition, was by me first sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and that the deposition by him subscribed was reduced to writing by me, and subscribed by him in my presence, and the same were taken on the 24th day of May, A. D. 1872, at my office in the city of Columbus, Ohio, commencing at 10 o'clock a. m., as specified in the notice hereto attached.

JAMES A. WILCOX,
Examiner.

464 N. Y., *May* 11, 1872, 11 a. m.—Present: George Gifford, esq., counsel for defendants, and Jabez S. Holmes, esq., counsel for complainant.

WILLIAM D. HEWLETT, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth on the matter of controversy herein; and being examined by Mr. Gifford, counsel for defendants, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William D. Hewlett; I am 37 years of age; I reside at 34 Beach street, New York City, and my occupation is that of janitor of the building No. 34 Beach street.

Q. 2. Have you ever made ice-cream, and if you have, when first and where?

A. I have; at New Brunswick, New Jersey, in 1847.

Q. 3. How long were you engaged in making it at that place?

A. Two years.

Q. 4. What vessels did you use in making it?

A. One of wood and one of tin.

Q. 5. What did you put in the tin vessel?

A. Milk.

Q. 6. What did you put in the wooden vessel?

A. Ice and salt.

405 Q. 7. Explain just how you arranged the vessels and froze the cream or milk.

A. I placed the tin vessel inside of the wooden one, put a layer of ice and a layer of salt around the tin vessel until it was filled to the top of the wooden vessel, and covered the whole concern with a blanket, and put it aside for use when called for.

Q. 8. How was it as to the tin vessel having a cover besides the blanket?

A. The tin vessel was tightly covered before the blanket was put over it.

Q. 9. Did you make ice-cream in New Brunswick as you have stated on your own account, or were you in the employment of some one else?

A. I was in the employment of another person.

Q. 10. Have you ever made ice-cream as a business on your own account?

A. I have.

Q. 11. State whether the way you have described of freezing cream and milk is the usual way of freezing it.

A. I have never heard of any other way of freezing it, sir.

Q. 12. When you made it in New Brunswick, as you have stated, what was your practice as to preserving it in a frozen state?

A. I received my orders to break up my ice and mix it with my salt, and put it around the tin vessel, and cover the whole concern up and set it aside.

Q. 13. For how long did you preserve it in a frozen state?

466 A. From 10 to 12 hours.

Q. 14. Would there have been any difficulty in preserving it in a frozen state for a longer time?

(Objected to as to form and substance.)

A. No, sir.

Q. 15. Have you recently frozen a fish in an ice-cream freezer?

(Objected to as immaterial.)

A. I have, sir.

Q. 16. At whose request?

(Same objection.)

A. At the request of Mr. Gifford.

Q. 17. Have you here that ice-cream freezer and the fish in it?

(Objected to as before.)

A. I have, sir.

Q. 18. State whether or not the fish is still frozen.

(Objection continued.)

A. Yes, sir; the fish is still frozen.

Q. 19. What kind of a fish is it?

(Same objection.)

A. A fresh cod-fish, sir, weighing about four pounds and three-quarters.

467 Q. 20. Please take that fish out of the freezer and show him to Mr. Holmes, counsel for the complainant.

(Same objection.)

(Witness produces the fish in a rigid, frozen condition, and exhibits him to Mr. Holmes.)

Q. 21. Please have the vessels which you employed in freezing that fish marked as exhibits in this case.

(Same objection.)

A. I produce them.

(They are marked exhibits ice-cream freezer Nos. 1 and 2.)

And being cross-examined de bene esse by Mr. Holmes, counsel for complainants, he says:

X Q. 22. Please describe the process of freezing ice-cream after the cream or milk is put into the tin freezing-receptacle.

A. I put the tin receptacle into the wooden vessel and surround the tin vessel with ice and salt; I cover the tin vessel up tightly with a tin cover and cover then the whole apparatus with a blanket; I then set it aside.

X Q. 23. Is that all that you do?

A. That is all that I do, sir.

X Q. 24. Is that all that is generally done, as far as you know, in freezing ice-cream?

A. Yes, sir.

X Q. 25. Are you now in the ice-cream business?

A. I am not.

468 X Q. 26. Is the process you have described the only one you have ever heard of for freezing ice-cream?

A. I have never heard of anything different.

X Q. 27. Have you described the whole process?

A. I have, sir, as far as my experience goes.

X Q. 28. Have you described the whole process, so far as you know it?

A. I have, sir.

X Q. 29. Did you put the cod-fish of which you have testified into the freezer and take it out?

A. I did, sir.

X Q. 30. How long was it there?

A. Over twenty-four hours, sir.

X Q. 31. How much over?

A. About thirty-six hours in all.

X Q. 32. When did you put it in, and when did you take it out?

A. I put it in on May 10, at 7 p. m., and took it out May the 11th, at 45 minutes past 10 a. m.

X Q. 33. Where has it, the fish, been since?

A. I took it out in the office of Mr. Gifford here within an hour.

X Q. 34. If I understand you, you put into a common ice-cream freezer a cod-fish weighing 4¾ lbs. about, and using the freezer in the only way you knew of to freeze ice-cream, left the fish there, without touching the fish or the apparatus, for thirty-six hours, and took it out in Mr. Gifford's office in the state in which you showed it to me—am I correct?

469 A. It was necessary to refill the tub with ice and salt around the freezer; I had no occasion to take the cover off.

X Q. 35. How many times did you refill the tub?

A. Three or four times.

X Q. 36. How did you place the fish in the tin receptacle?

A. By taking off the cover and putting him inside the tin receptacle, and covering it over again.

X Q. 37. Did you put the fish in by bending it so as to fit the circumference of the tin receptacle?

A. No, sir; I did not. I put the fish in just as I got him; I did not bend him.

X Q. 38. Did you get him bent in that way?

A. No, sir; he bent himself; I mean I put him in there and the space was small and he took that shape.

X Q. 39. Did you suspend the fish in the tin receptacle, or did you bend him around so that you could make him conform to the shape of the receptacle, instead of hanging with the tail or the head toward the bottom of the receptacle?

A. I did not suspend him by anything; I put the fish into the freezer and covered it up.

X Q. 40. If you did not suspend the fish in the tin receptacle you bent him around and put him in with one side of the fish against the tin side of the receptacle, didn't you?

A. I did not bend the fish around the receptacle; the fish rested against the side of the freezer.

470 And being re-examined by Mr. Gifford, he says:

Q. 41 Re-D. Look at your answer to the 32d cross-question and see whether or not you have made a mistake as to the time when you put the fish into the freezer?

A. I put it in May 10th and took it out May 11th in the morning.

Q. 42 Re-D. How many hours, then, did it remain in?

A. From 7 o'clock of the 10th until 45 minutes past 10 of the 11th—a day and a half; I meant I put him in at 7 o'clock in the morning instead of 7 o'clock p. m.

And being further cross-examined by Mr. Holmes, he says:

Re-X Q. 43. When you froze ice cream in the way you have described, did it come out of the freezer smooth and in proper condition for eating?

A. Yes, sir.

W'M D. HEWLETT.

Subscribed and sworn to before me this 11th day of May, A. D. 1872.

JOSEPH GUTMAN, JR., *Examiner, &c.*

PETER B. DARTOIS, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in
471 the matter of controversy herein, and being examined by Mr. Gifford, counsel for defendants, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Peter B. Dartois. I am 59 years old. I reside at the city of New York. I am an ice-cream manufacturer.

Q. 2. How long have you been engaged in making ice-cream?

A. Twenty-odd years at New York Garden, fourteen years at Niblo's—for the last thirty-four years.

Q. 3. With whom were you so engaged?

A. First with John H. Contoit, at the New York Garden, and afterwards with William Niblo.

Q. 4. Please state the mode of making ice-cream as you have practised it.

A. There are different qualities and different kinds. First, I would make a custard, and pour it into an ice-cream can, place it into a wooden tub, and have my ice and salt mixed and put around between the can and the wooden vessel; then I would work it about an hour, then I close the cover, and draw all the water out of the wooden tub or vessel, and put fresh ice and salt around the same can and cover it over with a blanket, and let it remain for five or six hours, and it was then fit to serve up.

Q. 5. During the operation of freezing, was the can covered or uncovered?

A. Covered.

Q. 6. How long have you preserved frozen cream in a frozen state in the ice-cream freezer?

472 A. I once did it for twenty-four days.

And being cross-examined by Mr. Holmes, counsel for complainant, he deposes and says:

Q. 7. What do you mean by work it for an hour?

A. By taking a spoon and mixing it up while it was freezing.

And being further examined by Mr. Gifford, he says:

Q. 8. Re-D. What did you work it for?

A. Merely to get it smooth—to prevent its getting lumpy.

And being further cross-examined by Mr. Holmes, he says:

Q. 9. Re-X. Did you ever freeze ice-cream without working it?

A. It would not be proper for to make ice-cream; I never did.

And being further examined by Mr. Gifford he says:

Q. 10. Re-D. Would or not the cream freeze as quick without such working as with it?

(Objected to for form, and because the witness has said that he never froze cream in that way.)

A. Not properly.

Q. 11. Re-D. What do you mean by not properly?

(Same objection.)

473 A. It would not be the routine way of making cream—not the right way; but as for the freezing part the ice and salt finishes it—makes it hard and complete.

Q. 12. Re-D. Suppose you put the cream in the freezer, with your ice and salt around it, and cover it up without mixing it with a spoon as you have stated, would it or not freeze?

(Objection continued, and also as immaterial.)

A. Yes, sir.

PETER B. DARTOIS.

Subscribed and sworn to before me this 11th day of May, 1872.

JOSEPH GUTMAN, JR.,
Examiner, &c.

N. Y., *May* 13, 1872, 9 a. m.—Present, counsel as before.

EDWIN A. DAY, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify

the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Gifford, counsel for defendants, deposes and says as follows:

474 Q. 1. What is your name, age, residence, and occupation?

A. My name is Edwin A. Day; I reside at Jersey City, New Jersey; I am 44 years of age; I am a confectioner and baker.

Q. 2. Are you a member of a firm carrying on business in Jersey City; if yea, what is the name of the firm?

A. I am; the firm's name is Morrow & Day.

Q. 3. How long have you been acquainted with the use of ice-cream freezers?

A. Nineteen years; I went into business nineteen years ago this spring.

Q. 4. Please look at the apparatus marked "Ice-cream Freezer No. 1" and No. 2, and state whether or not that is the kind you were acquainted with nineteen years ago.

A. It is.

Q. 5. What kind of ice-cream freezers does your firm use now to freeze the cream?

A. We use Seaman's patent, of Philadelphia.

Q. 6. State whether or not you preserve the cream in a frozen state for any length of time after it is frozen.

A. We do.

Q. 7. By the use of what apparatus do you so preserve it, and for what length of time?

A. We use this (pointing to Exhibit Ice-cream Freezer No. 1 and No. 2) and this only; we preserve it from twelve to twenty-four hours in a good state with once packing; in a room without fire you could keep it for twenty-four hours in a good state of preservation with-
475 out changing the ice and salt; to do that the wooden tub would have to be thicker than this one.

Q. 8. How long could you preserve the ice-cream in a frozen state in such an apparatus by changing the ice and salt?

(Objected to, as it does not appear that the witness has any experience on the subject.)

A. You could keep it forever; it would always stay frozen.

And being cross-examined by Mr. Holmes, he deposes and says:

X-Q. 9. When you froze ice-cream in the apparatus like the exhibit, what was the process from the beginning to the end of it?

A. We would first break our ice and mix salt with it, and fill the tub, then shake the can, which had been previously filled with the cream; the next step would be to cut down the frozen cream from the sides of the can, where it would freeze fast, and mix it all through in the can—stirring it all up in the can; repeating that until it was of sufficient consistency for what we call the beating process. The ice and salt was put in the wooden tub, around the can.

X-Q. 10. What is the beating process?

A. It is a process of beating the frozen cream with what we call a wooden spaddle.

X-Q. 11. After the cream is beaten, what do you do with it?

476 A. Cover it up and set it away ready for use, after standing a little while to get harder—perhaps twenty minutes.

X-Q. 12. When you say above, "shake the can," you mean take hold of the handle or top, and rotate the can first one way and then the other, do you not?

A. That is what I mean.

X-Q. 13. How long have you used the Seaman apparatus?

A. About ten years, I should think; perhaps a little longer.

X-Q. 14. And the process of freezing ice-cream by the Seaman apparatus is substantially the same as the old one which you have already described, is it not?

A. Yes, about the same principle in point of fact. It is a great deal more rapidly done; it dispenses entirely with the necessity of using the wooden spaddle.

And being further examined by Mr. Gifford, he deposes and says:

Q. 15 Re-d. You say that by the use of the old apparatus to freeze you rotated the can back and forth; what did you do that for?

A. It facilitated the freezing; that was the custom, but we sometimes excepted to the rule, and dispensed with this rotating operation.

Q. 16 Re-d. After the cream was frozen by the old apparatus, as you said, was it or not your custom to sometimes preserve it in a frozen state?

A. Always.

477 Q. 17 Re-d. How did you preserve it in a frozen state?

A. When frozen we would draw off the water, repack it with ice and salt, cover it over, and set it away. We used cloths—a woolen cloth—to cover it over with.

Q. 18 Re-d. What did you cover over with a cloth?

A. The whole apparatus—the can and the tub; the cover was on the can under the cloth.

And being further cross-examined, he deposes and says:

Q. 19 Re-x. You say that you sometimes omitted the rotating process. Was the ice-cream just the same when you omitted the rotation?

A. Yes, sir; that was when we had large orders on hand and were short of help; we would pack away several cans and set them away to freeze.

Q. 20 Re-x. Would not the cream be different in its quality and consistency when you did not rotate the cans?

A. Not if we attended strictly to the cutting down and beating.

EDWIN A. DAY.

Subscribed and sworn to before me this 13th day of May, 1872.

JOSEPH GUTMAN, JR., *Examiner*, &c.

478 NEW YORK, June 20, 1872—11 a. m.—Present, Mr. Gifford, counsel for defendants, and Mr. Holmes, counsel for complainant. Examination adjourned to 2 p. m. of this day.

JOSEPH GUTMAN, JR., *Examiner*, &c.

NEW YORK, June 20, 1872—2 p. m.—Present, counsel as before.

JOHN A. CONQUEST, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Witter, counsel for defendants, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John A. Conquest; I am twenty-two years of age; I reside at Boston, Mass.; I am a salesman in the fish business.

Q. 2. State whether or not you have had any, and if yea what, experience in freezing fish or other articles, artificially or otherwise.

A. I have had experience in freezing fish; I have had two years' such experience.

479 Q. 3. Where?
A. Charlestown and Boston.
Q. 4. Please describe briefly in language how you accomplished that object, describing the apparatus and means employed.
(Objected to as immaterial and irrelevant, the witness having stated that his experience only extends back two years.)
A. Well, we filled the apparatus with salt and ice so as to bring the thermometer down to 15 degrees above zero; then put fish in and froze them, so they were nice and sweet when they came out—and poultry and meats.
Q. 5. State where you put the fish, poultry, and meats.
A. In the room with the salt and ice.
(Question and answer objected to as immaterial and irrelevant, as before, and also as raising or intending to raise a defence not alleged nor suggested by the answer.)
Q. 6. Did the articles which you wished to freeze touch or rest upon the ice and salt?
(Same objection as to last question.)
A. No, sir.
Q. 7. Were were they—that is, the fish, poultry, &c., with reference to the ice and salt?
(Objection continued.)
A. Under the pan; the pan was suspended over them.
Q. 8. To what pan do you refer?
480 (Objection continued.)
A. The only pan that was in the apparatus.
Q. 9. For what was that pan used?
(Objection continued.)
A. To hold ice and salt.
Q. 10. Describe its shape.
(Objection continued.)
A. About six feet square and two feet deep, with pipes running out of the bottom of it.
Q. 11. State whether or not there was free communication between the pan holding the ice and salt and the space outside the pan containing the fish, &c., to be frozen?
(Objection continued.)
A. There was.
Q. 12. Have you a model representing the apparatus used by you as testified?
(Objection continued.)
A. I have.
Q. 13. Produce it, and have it marked by the examiner as an exhibit in this case.
(Objection continued, and introduction of exhibit objected to.)
481 A. I produce the model. (It is marked "Defendants' Exhibit Conquest.")
Q. 14. State how long you froze fish and other articles in the apparatus testified to by you and represented by the model "Defendants' Exhibit Conquest."
(Objection continued.)
A. Fifteen months.
Q. 15. What articles did you freeze in this apparatus?
(Objection continued.)
A. Salmon, poultry of all kinds, and reindeer, rabbits—that's all.
Q. 16. Please give us some idea how many salmon you froze in that apparatus.

(Objection continued.)

A. Fifty thousand weight—I mean fifty thousand pounds.

Q. 17. How much of other articles, approximately?

(Objection continued.)

A. Twenty-five thousand weight.

Q. 18. Please indicate in the model the pan in which (in the apparatus you used) you placed the ice and salt.

(Objection continued.)

A. Witness indicates the pan marked I.

482 Q. 19. Please indicate where you put the fish or other articles to be frozen.

(Objection continued.)

A. In arches under the pan, and all around where it is marked II.

Q. 20. You say that there was free communication between the ice and salt to the articles to be frozen; please tell what that communication was.

(Objection continued.)

A. The pan set in the house along with the fish; the pan had salt and ice in it.

Q. 21. How did the air from the place where the salt and ice were get to the place where the articles to be frozen were?

(Objection continued.)

A. There was three inches cut off the top of the pan in the front and sides.

Q. 22. State in what manner this apparatus, as used by you and represented by the model, Defendants' Exhibit Conquest, froze the articles placed therein.

(Objection continued.)

A. We put the fish in the room along with the pan, ice, and salt, and when we took them out they came out sweet and good.

Q. 23. Were they frozen or not when you took them out?

483 (Objection continued.)

A. They were frozen.

Q. 24. What are the peg-like projections which I observe protruding from the bottom of the model, Defendants' Exhibit Conquest, made to represent?

(Objection continued.)

A. Pipes leading into the pan.

Q. 25. What was their duty?

(Objection continued.)

A. To hold ice and salt.

Q. 26. I also observe what appears to be a semi-cylindrical pipe, in the shape of a square, and resting upon the bottom of said model; what is that, and what is its object?

(Objection continued.)

A. We fill it up with salt and ice, but it acts as a drain, also.

Q. 27. Did this pipe to which you have last referred rest upon the bottom of the apparatus which you used, as represented in the model, or how?

(Objection continued.)

A. It set up three inches above the floor.

Q. 28. Was there any, and if yea, what communication from this pipe outside of the apparatus?

(Objection continued.)

484 A. There was.

Q. 29. By means of what?

(Objection continued.)

A. A five-inch drain-pipe.

Q. 30. State whether there was any communication between the ice and salt in the pipe which you say was located three inches from the bottom and the place where the fish, &c., were placed; if yea, what communication?

(Objection continued.)

A. There were two-inch holes in these pipes.

Q. 31. How many such holes, as near as you are able to say?

(Objection continued.)

A. One on the front and one on each side.

Q. 32. How were the fish and other articles put in to be frozen?

(Objection continued.)

A. Brought in through the door in front of the apparatus.

Q. 33. Is that door represented in the model?

(Objection continued.)

A. It is not.

Q. 34. What was done with the fish and other articles frozen
485 by you in this apparatus after they were taken out of the apparatus in a frozen, nice, and sweet state, as you have testified?

(Objection continued.)

A. Shipped to New York and Philadelphia, and used in Boston; they were sold.

Cross-examination de bene esse, without waiver of objections already taken:

X-Q. 35. You are in the employ of Brown, Seavey & Co., of Boston, are you not?

A. I am.

X-Q. 36. How long have you been in their employ?

A. Since March, 1870.

X-Q. 37. And all your experience in freezing, &c., has been gained since you have been in their employ, has it not?

A. It has.

X-Q. 38. They were sued by Mr. Piper, were they not?

(Objected to, as the record is the proper evidence of this matter.)

A. They were.

X-Q. 39. Were you ever examined as a witness in that case?

486 A. I was not.

X-Q. 40. Have you been in their employ continuously?

A. I have.

JOHN A. CONQUEST.

Subscribed and sworn before me this 20th day of June, 1872.

JOSEPH GUTMAN, JR., *Examiner*, &c.

488 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday the sixteenth day of December, in the year of our Lord one thousand eight hundred and seventy-two.

Present: The Honorable Samuel Blatchford, district judge.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL. } In equity.

The above-entitled cause coming on for final hearing upon pleadings and proofs,

Mr. Jabez Holmes is heard in behalf of the complainant.

Mr. Causten Brown is heard on same side.
Mr. George Gifford is heard in behalf of the defendant.
Mr. Brown closes.
Bill dismissed with costs.

490 United States circuit court, southern district of New York.
In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL. } Dec. 16, 1872.

BLATCHFORD, J., in deciding this case, said, in substance:

The patent to the plaintiff, granted March 19, 1861, is for an "improvement in the method of preserving fish." The specification says: "The nature of my invention consists in a method of preserving fish and other articles, by placing them within a chamber and cooling the latter by means of a freezing-mixture, so applied that no communication shall exist between the interior of the preserving-chamber and that of the vessel in which the freezing-mixture is placed. The most important application which I propose to make of my invention is for preserving salmon, which are only taken in large quantities in high
491 northern latitudes, in summer, so remote from our large cities that they can be made available in a fresh state only by artificial congelation. Hitherto, the only method in use for preserving this kind of fish in a fresh state, has been to pack them with crushed ice in barrels or boxes. This method, however, owing to the melting of the ice, and the consequent moistening of the fish, fails to preserve them fresh and good for more than a month, at most; whereas, by my new method and treatment they can be kept as fresh and sweet as when first caught, and for any desirable length of time, even for years. I do not profess to have invented the means of producing artificial congelation, nor to have discovered the fact that no decay takes place in animal substances so long as they are kept a few degrees below the freezing-point of water; but the practical application of these to the art of preserving fish and meats, as above described, is a new and very valuable improvement. The apparatus for freezing the fish, and keeping them in
492 a frozen state, may be constructed in various ways, and of different shapes. The apparatus shown in the drawing, however, will suffice to illustrate the principle and mode of operation." The specification then describes, with reference to the drawings, a method of freezing the fish, by laying them in small quantities on a rack in a box of wood or other suitable material, which is surrounded by a packing of charcoal or other suitable non-conducting material. Metallic pans, filled with a freezing-mixture, such as salt and ice, are then set over the fish, and the cover is shut upon them.

The specification proceeds: "The temperature in the box soon falls to ten or fifteen degrees below the freezing-point of water, and, in about twenty-four hours, the mixture being changed once in twelve hours, the fish will be completely frozen through. After being thus frozen, the fish or meat may, if desired, be covered with a coating of ice, by immersing them a few times in ice-cold water, or by applying the water
493 with a brush, or swab, several times, forming a coat of about one-eighth of an inch in thickness. To prevent the ice from cracking off, I then apply to the fish, when they are to be kept an unusual length of time,

a cover of cloth, and in the same manner cover the cloth with another coating of ice; or, they may be coated with gum-arabic, India rubber, gutta-percha, tin-foil, or any suitable substance, either in combination or separately, that will effectually exclude the air and prevent the juices from escaping by evaporation, thereby preserving the same plump and fresh appearance as when first frozen."

The specification then goes on to say that the fish are then packed closely together in a large preserving-box, which is enclosed in a still larger box, the space between the two boxes being filled with charcoal or other non-conducting material to exclude the heat; that metallic tubes pass through the inner box, which are open at the upper
494 ends for the introduction of a freezing-mixture, the lower extremities being formed with flanges screwed to the bottom of the box; that a small tube leads from the bottom of each tube to the outside of the outer box, to draw off the brine from the tubes; that the tubes project, at the top, through the cover of the outer box, when it is shut down, so that they may be charged with the freezing-mixture without opening the box; and that by keeping the tubes filled with the mixture of salt and ice, the temperature of the preserving-chamber can be maintained for any length of time below the freezing-point, and fish surrounded by the dry and freezing atmosphere will be preserved as fresh and good as when first caught, and for a much longer period than by any other method. The patentee adds: "I do not desire to be understood as confining myself to the use of the specific apparatus above described, nor to the use of either or both the preliminary processes of freezing and coating, but I have described the mode of operation which, by experience, I have found best for preserving the
495 most delicate varieties of fish. In the case of meats, it is not necessary to resort to the coating process, especially beef and pork, preserved for salt-packing in warm weather, which can be done by this treatment with no more loss than in the best winter weather, while the cold pickle, or brine, of the dissolving salt and ice is ready made, and may be drawn off, as required, to pickle the barrels, after packing the meats, &c." The claim is in these words: "Preserving fish or other articles in a close chamber, by means of a freezing-mixture, having no contact with the atmosphere of the preserving-chamber, substantially as set forth."

In this specification, as is usually the case, the patentee first sets forth the nature of his invention by stating in what it consists; and we expect to find that the claim corresponds with such statement of the nature of the invention, whatever may be set forth in the inter-
496 vening descriptive part of the specification. The claim in the present case is not so worded as not to cover a process, or subprocess, less than the entire process, or series of processes, described in the specification.

The statement of the nature of the invention says that it consists in a method of "preserving" fish and other articles, by placing them within a chamber, and cooling the latter by my means of a freezing-mixture, so applied that no communication shall exist between the interior of the "preserving" chamber, and that of the vessels in which the freezing-mixture is placed. The claim is for "preserving" fish or other article, in a close chamber, by means of a freezing-mixture, having no contact with the atmosphere of the "preserving" chamber, substantially as settled. What is the meaning of the word "preserving," as so used, and what is the chamber that is so referred to as the "preserving" chamber? Manifestly, the word refers to the process to which the article

is subjected in the chamber between the interior of which and the
497 interior of the vessels containing the freezing-mixture there is no communication. That chamber is the preserving-chamber. That chamber may be used to freeze the article by means of a freezing-mixture, applied as stated, as well as to preserve it afterwards by means of a freezing-mixture, applied as stated; and the claim may cover the process when the chamber is used both to so freeze and so preserve the article, and also when it is used only to so freeze the article, and also when it is used only to so preserve the article. The article is preserved when it is only frozen in the chamber. It is preserved when it is only kept in the chamber, after being first frozen elsewhere. It is preserved when it is frozen in the chamber, and then continues to remain in the chamber. That is, the scope of the claim is shown by the fact that the specification speaks of "the preliminary processes of freezing and coating," and states that the patentee does not confine himself to the use of either or both of those preliminary processes. The preliminary process of freezing referred to is described as one of freezing the article in a
498 box, where the open pans of salt and ice are shut up in a box with the article. It is not the process referred to in the claim, which expressly requires that the article shall be in a close chamber, and that the freezing-mixture shall have no contact with the atmosphere of that chamber. Therefore, whenever an article, already frozen, is preserved in a frozen state, in a close chamber, by means of a freezing-mixture, which has the effect to keep the frozen article in such frozen state, while at the same time such mixture has no contact with the atmosphere of the preserving-chamber, the claim of the patent is infringed, provided that it is done "substantially as set forth" in the specification. Full effect must be given to the words, "substantially as set forth." How is it set forth that the process must be practiced? It is not required that there shall be no contact between the article that is undergoing preservation and the metal which is interposed between such article and the freezing-
499 mixture. On the contrary, the specification says that the fish are "packed closely together" in a box, directly through which run the metallic tubes which contain the freezing-mixture. If the fish are thus packed closely together, some of them must be thus packed around the tubes. There is no direction that none of them are to be in contact with the tubes. It is true that the specification speaks of the fish as being preserved because surrounded by a dry and freezing atmosphere. They will be surrounded by so much of a dry and freezing atmosphere as can surround fish packed closely together in contact with the tubes. All the atmosphere there is will be dry and freezing.

With this view of the claim, the invention covered by it, so far as preserving the frozen article is concerned, (and the claim covers that by itself,) is anticipated by what is proved in regard to the use of the process of preserving frozen ice-cream. Anterior to the patentee's invention, ice-cream, frozen, was preserved in a frozen state, in a close
500 chamber, by means of a freezing-mixture which had no contact with the atmosphere of the chamber. The frozen ice-cream was thus preserved in a frozen state for a length of time, in one instance, as is shown, twenty-four days; and it might have been preserved an indefinite length of time by renewing the freezing-mixture. The freezing-mixture surrounded the metallic vessel containing the frozen ice-cream, instead of being in pipes, which ran through such vessel; but that made no difference in the process. Some of the frozen ice-cream was in contact with the metal interposed between it and the freezing-mixture, as some of the fish, in the practice of the plaintiff's process, are in contact

with the metal interposed between them and the freezing-mixture. All the atmosphere there was in the vessel containing the frozen ice-cream was dry and freezing. The frozen ice-cream was, in its frozen state, not a liquid, but a solid. It was no more a liquid than a frozen fish is a liquid. A fish, before being frozen, consists largely of watery
501 particles. If it did not, it could not be frozen, for it is the watery particles in it that are frozen. What is frozen in the ice-cream, and what is frozen in the fish, is the same thing—the liquid parts. These are proportionately greater in the unfrozen ice-cream than in the unfrozen fish. That is the only difference.

The specification of the patent, in describing the process claimed, describes the process previously used for preserving frozen ice-cream. All that the patentee has done, according to his claim, is to take the frozen ice-cream out of the vessel and put into it a fish or other article, frozen or unfrozen. That is no patentable invention. If the process of preserving the frozen ice-cream had not existed previously, the use of such process, in the manner stated, would be within the claim of the patent, and would be an infringement of it. The prior use of such process must, therefore, be an anticipation of the claim of the patent, at least, in a case like this.

502 The patentee may be the first person who has practically succeeded in introducing into the market, at all seasons, salmon as fresh as when first caught, and may thus have supplied a great desideratum, and have established a business that is commercially profitable. He may have invented something, in that connection, which is capable of being protected by a patent, and he may have described in this specification, or shown in the model or drawings accompanying it, something which may be claimed, and well claimed, as an invention, and which may be secured to him by a re-issue. But, the difficulty with the present claim is, that it is too broad, and that it covers nothing but a process, and that a process practiced before, substantially in the manner set forth in the specification.

For these reasons the bill must be dismissed, with costs.

Causten Bowne and Jabez S. Holmes for the plaintiff.

George Gifford for the defendants.

503 (Endorsed:) U. S. circuit court, Enoch Piper vs. George T. Moon et al. Decision. Filed Dec. 24, 1872.

504 U. S. circuit court, southern dist. of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL.

It is consented that the defendants' costs and disbursements in this suit be taxed at six hundred and seventy-five dollars, and that that sum be inserted in the decree in this suit.

Dated Dec. 16th, 1872.

GEO. GIFFORD,
Def'ts' Sol'r.
M. B. ANDRUS,
Comp't's Sol'r.

The defendants' costs and disbursements in the above-entitled suit are hereby taxed at the sum of six hundred and seventy-five dollars, pursuant to the foregoing consent.

R. E. STILWELL,
Deputy Clerk.

505 (Endorsed:) U. S. circuit court.

506 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Monday, the 16th day of December, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the honorable Samuel Blatchford, dist. judge.

ENOCH PIPER
vs.
GEORGE T. MOON, GEORGE S. LAMPHEAR, Pulaski Benjamin, Benjamin W. West, Samuel B. Miller, John Comstock, James C. Comstock, Thomas R. Crocker, Caleb Haley, and Gilbert Comstock.

This cause having heretofore been brought to a hearing upon the
507 pleadings and proofs therein, and having been argued by Jabez J. Holmes and Causten Browne for the complainant, and by George Gifford for the defendants, and due deliberation had thereon, it is now, on motion of George Gifford for the said defendants, ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth hereby order, adjudge, determine, and decree, that the said complainant's bill filed be, and the same is hereby, dismissed with costs, taxed by consent at the sum of six hundred and seventy-five dollars.

(Signed.) SAM'L BLATCHFORD.

(Endorsed:) U. S. circuit court s. d. of N. Y. In equity. Enoch Piper vs. Geo. T. Moon et al. Copy final decree. George Gifford, def'ts' sol'r, 24 Beach st., N. Y. Filed Dec. 24, 1872.

508 U. S. circuit court, southern dist. of New York. In equity.

ENOCH PIPER
vs.
GEORGE T. MOON, GEORGE S. LAMPHEAR, Pulaski Benjamin, Benjamin W. West, Samuel B. Miller, John Comstock, James C. Comstock, Thomas R. Crocker, Caleb Haley, and Gilbert Comstock.

A decree dismissing the complainant's bill of complaint in this suit having been rendered by the court at the present October term thereof, to wit: on the 16th day of December, 1872, bearing that date, and the complainant's counsel having on that day applied to the court in open session thereof for an appeal from said decree to the Supreme Court of the United States to be allowed to the complainant herein, it is ordered that said application be granted and said appeal allowed
509 as of the date aforesaid, pursuant to said application.

SAM'L BLATCHFORD.

I see no objection to the above order, and consent to its allowance.

GEO. GIFFORD,
Def'ts' Sol'r.

(Endorsed:) U. S. circuit court, southern dist. of New York. In equity. Enoch Piper v. George T. Moon et al. Order allowing appeal. M. B. Andrus, compl't's sol'r, 27 Chamber st., New York. Filed Dec. 28, 1872.

510 U. S. circuit court, southern dist. of New York. In equity.

ENOCH PIPER
v.
GEORGE T. MOON ET AL.

SIR: You will please take notice that the complainant in this suit has duly appealed to the Supreme Court of the United States, and said appeal has been allowed by the court in due form, from the decree made by the court in said suit dismissing the bill of complaint therein, which decree bears date on the 16th day of December instant, and that said appeal has been perfected in due form. Dated Dec'r 28, 1872.

Yours, &c.,
M. B. ANDRUS,
Compl't's Sol'r, 27 Chamber st., New York.

GEO. GIFFORD, Esq.,
Def'ts' Sol'r.

511 (Endorsed:) U. S. circuit court, southern dist. of New York. In equity. Enoch Piper vs. George T. Moon et al. Notice of appeal. M. B. Andrus, compl't's sol'r, 27 Chamber st., New York.

I hereby admit due and timely service of a notice of which within is a copy. Dec'r 28, 1872.

GEORGE GIFFORD.
Def'ts' Sol'r.

Filed Dec. 28, 1872.

512 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

ENOCH PIPER
vs.
GEORGE T. MOON, GEORGE S. LAMPHEAR, Pulaski Benjamin, Benjamin W. West, Samuel B. Miller, John Comstock, James C. Comstock, Thomas R. Crocker, Caleb Haley, & Gilbert Comstock.

Know all men by these presents, that we, Enoch Piper, of Camden, in the State of Maine, as principal, and William H. Middleton and Gilson Carman, both of Brooklyn, in the State of New York, as sureties, are held and firmly bound unto the above-named defendants in the sum of one thousand dollars, to be paid to the said defendants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the 23d day of December, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas the above-named Enoch Piper has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Enoch Piper shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make his said appeal

good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ENOCH PIPER. [L. S.]
WILLIAM H. MIDDLETON. [L. S.]
GILSON CARMAN. [L. S.]

Witness to signature of Enoch Piper—
EDWIN T. NASH, *Dep. Clk U. S. C. C. Mass. Dist.*

Sealed and delivered, and taken and acknowledged, this 23d day of Dec'r, 1872, before me, as to Wm. H. Middleton and Gilson Carman,

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

513 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William H. Middleton, of 339 McDonough st., city of Brooklyn, and Gilson Carman, of Ashland House, cor. of 44th st. and 4 av., city of New York, being duly sworn, doth depose and say, and each for himself saith that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

WILLIAM H. MIDDLETON.
GILSON CARMAN.

Sworn to this 23d day of Dec., A. D. 1872, before me.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

The foregoing bond is approved as to form and amount and sufficiency of sureties.

SAM'L BLATCHFORD.

Dec'r 24, 1872.

(Indorsed:) Vol. , page . U. S. circuit court. Enoch Piper vs. George T. Moon et al. Bond for costs on appeal. M. B. Andrus, compl't's sol. Filed this 24 day of Dec., 1872.

514 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 513 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Enoch Piper against George T. Moon et al., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this seventh day of January, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-seventh.

KENNETH G. WHITE
Clerk.

(Indorsement on cover:) No. 240. Enoch Piper, appellant, vs. George T. Moon, George S. Lanphear, P. Benjamin, B. W. West, Sam'l B. Miller, John Comstock, James C. Comstock, Thos. R. Crocker, Caleb Hawley, & Gilbert Comstock. S. New York, C. C. U. S. Filed 14th October, 1873.

O

SUPREME COURT OF THE UNITED STATES.

No. 240.

ENOCH PIPER, APPELLANT,

vs.

GEORGE T. MOON, GEORGE S. LANPHEAR, P. BENJAMIN, B. W. WEST, SAMUEL B. MILLER, JOHN COMSTOCK, JAMES C. COMSTOCK, THOMAS R. CROCKER, CALEB HAWLEY, AND GILBERT COMSTOCK.

STIPULATION OF COUNSEL AND ADDITION TO RECORD.—FILED MARCH 19, 1875.

1 U. S. circuit court, southern district of New York.

ENOCH PIPER
vs.
GEORGE T. MOON ET AL. } In equity.

It is hereby consented that the annexed certified copy of the patent granted to William Davis June 16, 1868, for improvement in preserving meats, &c., a certified copy of which patent was put in evidence by the complainant in this suit, and marked "Complainant's Exhibit 1, David F. Fox, special examiner, &c.," be taken, received, and used on the hearing thereof on appeal, and in the further progress of said suit in the place and stead of said exhibit with the same effect, and no other, as said exhibit might or could be used therein; and that the clerk of this court transmit said certified copy, duly authenticated, to the
2 Supreme Court of the United States in due form, as part of the record in this case in place of said exhibit, which has in some way become lost or mislaid, and that an order to that effect, if required, be duly granted by the court, or a judge thereof, and entered in the office of the clerk of said court.

Dated New York, March 16, 1875.

GEO. GIFFORD,
Defts.' Solr.

M. B. ANDRUS,
Complt.'s Solr.

Ordered accordingly March 18, 1875.

SAML. BLATCHFORD.

The U. S. Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office, of the letters-patent granted William Davis, dated
3 June 16, 1868, No. 78,932, for "Imp't in preserving meat, &c."

In testimony whereof, I, Saml. A. Duncan, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-fourth of November, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

[SEAL OF PATENT-OFFICE.]

SAML. A. DUNCAN,
Acting Commissioner.

No. 78,932.

The United States of America to all to whom these letters-patent shall come:

Whereas William Davis, of Detroit, Michigan, has alleged that
4 he has invented a new and useful improvement in preserving meat, &c., and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, praying that a patent may be issued therefor:

These are, therefore, to grant to the said William Davis, his executors, administrators, or assigns, for the term of seventeen years from the sixteenth day of June, one thousand eight hundred and sixty-eight, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof
5 is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-second.

[L. S.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

A. M. STOUT,
Acting Commissioner of Patents.

UNITED STATES PATENT-OFFICE:

William Davis, of Detroit, Michigan.—Letters-patent No. 78,932; dated June 16, 1868.—Improvement in preserving meat, &c.

6 The schedule referred to in these letters-patent, and making part of the same.

To all whom it may concern:

Be it known that I, William Davis, of Detroit, in the county of

Wayne and State of Michigan, have invented a new and useful improvement in apparatus for preserving fresh meats, fish, fruit, &c., and I do hereby declare the following to be a full and correct description of the same, sufficient to enable others skilled in the art to which my invention appertains to make and use the same, reference being had to the accompanying drawings, which make part of this specification, and in which Figure 1 is a perspective view of my apparatus, Figure 2 is a longitudinal section of the same in line x x, fig. 1, and Figure 3 is a cross-section of the same in line y y, fig. 1. Like letters of reference indicate like parts in the several figures. The nature of my invention consists in the peculiar construction of a railroad-car, box, chest, or room, in which to preserve animal and vegetable substances from decay for a certain reasonable time, to allow them to be transported from place to place, or kept in store, in a sweet and fresh condition.

In the drawings I have represented the body of a railroad car constructed according to my invention.

This is constructed of three separate compartments, A, B, C, one within the other, and arranged in such a manner that an open space is all around the innermost compartment C, as well as the compartment B. These spaces I fill with poor conductors of heat, such as animal hair, dry shavings, &c. Inside of the compartment C is the ice receptacle D, which consists of a double wall, d d′, extending from the bottom to the top of compartment C, and closed air-tight, except where chimneys or funnels E extend upwards from the receptacle D, through the roofs of the compartments A, B, C, and which serves to contain the freezing mixture, which is filled in through the chimneys or funnels E.

I do not confine myself to any *to any* particular freezing-mixture, as any known mixture, in any known proportions, will answer, and may be used according to circumstances. The chimneys or funnels E are provided with covers or caps, which close the receptacle D as air-tight as practicable, and which have a part extending down through chimneys E, just below the roof of compartment C, so that any heat passing through the spaces between the compartments through which the chimneys pass, cannot be communicated through the latter to the receptacle D.

The water or fluid which melts from the freezing mixture is collected at the lower part of the receptacle D, which is provided with a goose-neck trap F, or other equivalent device, through which the water can escape without any air being admitted into the receptacle, sufficient air always being contained in the same to allow the water to flow.

Access to the inside of the car is had through hatchways or doors in the roofs of the compartments A, B, C, which are closed practically air-tight by hatches G, each separate compartment being provided with one, or one door serving to close all three hatchways, as shown in Fig 2.

These hatches G, I prefer to construct with beveled sides to fit the beveled hatchways, as I am able to close the latter much more effectually than could be done if they were made straight. Doors may be constructed in the side of the car, and closed in the same manner as the hatchways in the roof; thus a car may be loaded at the starting-point with meats, fruits, &c., which are placed in the space surrounded by the receptable D through the side doors, which can then be closed, as above described. To discharge freight at way-stations the hatchways must be used, for if the side doors were opened the cold and consequently heavier atmosphere would pass out, while the warm outside atmosphere would at once fill the car and affect its contents.